

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 6 September 2022

Public Authority: Milton Keynes Council
Address: Civic
1 Saxon Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant requested information from Milton Keynes Council ("the Council") relating to emails sent between two Council staff members during a specific time period. The Council provided the complainant with information within the scope of the request. The complainant considers that the Council has not disclosed all the information it holds within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has provided the complainant with all the information it holds within the scope of the request. However, as the Council did not provide the complainant with the requested information within 20 working days, the Council has breached regulation 5(2) (time for compliance) of the EIR.
3. The Commissioner does not require the Council to take any steps.

Request and response

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

"I am writing to make a request for all the information to which I am entitled under the Freedom of Information Act 2000.

Please provide me with all copies of emails sent by [the Director for Growth, Economy and Culture] to [the Planning Manager] between the period of 1st January 2020 and 31st December 2021 regarding [address redacted].

I would like the copies of all the information you hold supplied to me via email in electronic format.

I understand that [the Planning Manager] left the council in or around 1st March 2020. After he left his email address was [email address of the Planning Manager]. My request should include the emails sent to this personal address as [the Planning Manager] still worked for the council as a consultant over [address redacted].

I understand that you are required to respond to my request within the 20 working days after you receive this email. I would be grateful if you could confirm that you have received this request.

I look forward to hearing from you."

5. The Council responded on 3 November 2021 and denied holding information within the scope of the request.
6. On 3 November 2021, the complainant wrote to the Council and requested an internal review.
7. Following an internal review the Council wrote to the complainant on 8 November 2021. It maintained that it did not hold any information within the scope of the request.

Scope of the case

8. The complainant contacted the Commissioner on 20 November 2021 to complain about the way their request for information had been handled.

9. During the course of the Commissioner's investigation, the Council provided the complainant with a further response to their request on 18 August 2022 in which they disclosed information within the scope of the request.
10. Following receipt of the Council's further response to their request, the complainant wrote to the Commissioner on 1 September 2022 to complain about the Council's handling of their request.
11. The scope of this case and the following analysis is to determine if the Council is correct when it says that it has disclosed all the information it holds within the scope of the request.

Reasons for decision

Regulation 12(4)(a) – information held/not held

12. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
13. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
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 Commissioner, 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 Commissioner must decide whether on the balance of probabilities a public authority holds any or additional information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

16. In their complaint to the Commissioner, the complainant stated that they consider the Council to hold further information within the scope of their request which has not been disclosed. Specifically, the complainant considers that the Council holds more emails between [the Director for Growth, Economy and Culture] and [the Planning Manager] than those which have been disclosed.
17. The complainant considers that the Council has not carried out adequate searches for the requested information. The complainant considers that

information within the scope of the request may be held within the email accounts of Council staff members if those staff members were copied into emails between [the Director for Growth, Economy and Culture] and [the Planning Manager].

18. Furthermore, the complainant considers that as [the Director for Growth, Economy and Culture] and [the Planning Manager] were involved in an appeal and public inquiry, information within the scope of the request which relates to the appeal and public inquiry would be retained as legal records and therefore, would still be held by the Council.

The Council's position

19. As is the practice in a case where there is some dispute over the amount of information located by a public authority and the amount of information that a complainant believes the public authority to hold, the Commissioner asked the Council to provide him with a detailed explanation of the searches it had conducted for information within the scope of the request.
20. In its submissions to the Commissioner, the Council explained it does not hold any emails sent by [the Director for Growth, Economy and Culture] to [the Planning Manager] that date from after December 2020. As [the Director for Growth, Economy and Culture] left the Council in December 2020 and [the Planning Manager] left the Council in March 2020 it would not have been possible for [the Director for Growth, Economy and Culture] to have sent emails to [the Planning Manager] after December 2020.
21. The Council explained that the email accounts of both [the Director for Growth, Economy and Culture] and [the Planning Manager] have been deleted as both no longer work at the Council. In line with the Council's retention policy, both email accounts were permanently deleted 90 days after [the Director for Growth, Economy and Culture] and [the Planning Manager] left the Council.
22. The Council explained that whilst the email accounts of [the Director for Growth, Economy and Culture] and [the Planning Manager] have been deleted, some information within the scope of the request may be held if that information constituted a business record and was therefore transferred to an alternative location before [the Director for Growth, Economy and Culture] and [the Planning Manager] left the Council.
23. Furthermore, the Council explained that information within the scope of the request may be held if a data hold was placed on information. A data hold is placed on information if that information may fall within the

scope of a FOI or EIR request. The data hold prevents information from being automatically deleted in line with the Council's retention policy.

24. The Council explained that it has conducted a search of all the information held on its servers for information within the scope of the request using the following search criteria:

Emails sent between 01/01/2020 and 31/12/2021 with a recipient of "[email address of the Planning Manager]" or "[email address of the Planning Manager]"

Emails received between 01/01/2020 and 31/12/2021 from "[email address of the Director for Growth, Economy and Culture]"

25. As a result of its search, the Council identified six email chains within the scope of the request. These emails have been disclosed to the complainant. The Council did not locate any other information within the scope of the request.
26. The Council explained whilst its search of its servers would have identified all the information it holds within the scope of the request, it also conducted a search of its shared mailboxes, drives and document management systems. This search did not locate any information within the scope of the request.
27. The Council explained that it also conducted a search of information which the Council has already disclosed in response to previous FOI requests. This search did not locate any information within the scope of the request which is not already within the public domain. The only information within the scope of the request which was located as a result of this search was some emails sent by [the Director for Growth, Economy and Culture] which [the Planning Manager] was copied into. The Council has provided the complainant with a URL link to where this information is located on the Council's website.

The Commissioner's position

28. The Commissioner has considered the Council's position in relation to whether the Council holds further information within the scope of the request.
29. The Commissioner is satisfied that the Council has carried out adequate searches for information within the scope of the request. Therefore, his decision is that on the balance of probabilities, the Council does not hold any further information within the scope of the request and so the exception provided by regulation 12(4)(a) is engaged.

Regulation 12(1)(b) – the public interest test

30. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exceptions set out under regulation 12 of the EIR.
31. However, as no further information has been found to be held, the Commissioner can only find that the public interest in maintaining the exemption at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no further information to disclose.

Regulation 5(2) – time for compliance

32. Regulation 5(1) of the EIR states that:

“a public authority that holds environmental information shall make it available on request.”

33. Regulation 5(2) of the EIR states that:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

34. The complainant submitted their request for information to the Council 19 October 2021. As the Council did not provide the complainant with the information it holds within the scope of the request until 18 August 2022, the Council has breached regulation 5(2) of the EIR.
35. As the Council has now disclosed the information it holds within the scope of the request, the Commissioner does not require the Council to take any steps.

Right of appeal

36. 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

37. 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.
38. 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

Ben Tomes
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