

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

### **Decision notice**

**Date:** 29 September 2022

**Public Authority:** Environment Agency

**Address:** Horizon House  
Deanery Road  
Bristol  
BS1 5AH

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

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1. The complainant has requested information from the Environment Agency (EA) regarding the reasons for its views about a planning situation. The EA disclosed some information to the complainant, however it stated that it held no further information within the scope of the complainant's request and directed them to the local planning authority.
2. The Commissioner's decision is that the EA has demonstrated that, on the balance of probabilities, it does not hold any further information within the scope of the complainant's request. Therefore the Commissioner requires no steps to be taken.

#### **Request and response**

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3. On 15 May 2021 (clarified on 8 June 2021) the complainant wrote to the EA and requested information in the following terms:

"Please provide the EA records which specify **the EA's reasons for its views** which must be recorded in the case of **(4)(ii)** above as required by Government Planning Guidance quoted in **(1)** above and also in accordance with the Environment Agency's role quoted in **(2)**."

4 (ii) was worded as follows:

"(4) (i) views of the Environment Agency without (ii) ANY records of the EA's reasons for its views (required by Government Planning Guidance and therefore part of the EA's role) 23 July 2019, Wiltshire ref: 18/06840/WCM, EA ref: WX/2018/132035/02-L01

'We have reviewed of (sic) the submitted 'Environmental Statement - Regulation 25 Addendum', June 2019.

The applicant has adequately addressed our previous concerns regarding

- Baseline and current hydrogeological conditions;
- Groundwater Conceptualisation;
- Cumulative impacts.'

4. On 6 July 2021 the EA responded to the request. It disclosed some information to the complainant and stated that the reasons for the enclosed response could be found in the formal consultation response, the records of which were with the local authority. The EA advised the complainant to contact the local authority for further information.
5. On 7 July 2021 the complainant requested an internal review of the EA's response, on the grounds that it had provided only its response, but not the reasons behind that response, i.e. its views, as requested. The complainant stated that the reasons for the EA's views should be provided so any decision made by the local planning authority subsequent to those views is transparent.
6. On 3 September 2021 the EA provided its internal review response. It stated that the reasons behind its views did not constitute recorded information held by it. It had directed the complainant to the local authority for further information and stated that the information it provided to the complainant on 6 July constituted the only recorded information held by it within the scope of the complainant's request, i.e. relating to the reasons for its views.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 6 December 2021 to complain about the way their request for information had been handled.
8. The Commissioner has considered the EA's handling of the complainant's request, in particular whether, on the balance of probabilities, the EA

holds further recorded information within the scope of the complainant's request.

### **Regulation 12(4)(a) – information not held at the time of the request**

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9. Regulation 12(4)(a) of the EIR provides an exception from the duty to make information available if the authority does not hold the requested information at the time of the request. The Commissioner considers the information to be environmental, which is why he has considered this exception under the EIR.
10. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
11. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
12. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, at the time of the request, the EA held further information within the scope of the request.
13. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. He will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, he will consider any other information or explanation offered by the public authority which is relevant to his determination.

### **The complainant's view**

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14. The complainant considers that the EA should hold recorded information relating to the reasons for its views so any subsequent planning decision made on foot of those views is transparent.
15. As is his practice, the Commissioner asked the EA to revisit its handling of the request under consideration in this case. He also asked it to explain what enquiries it had made in order to reach the view that it does not hold further information within the scope of the request.

16. The Commissioner did so with a series of detailed questions. These included asking about the searches that had been undertaken and the search terms used. He also asked whether any recorded information was ever held relevant to the scope of the complainant's request, but deleted or destroyed.
17. In its submission the EA informed the Commissioner that planning application documents and responses to consultations are held by the local planning authority and that the EA does not hold copies of these.
18. The EA informed the Commissioner that most of its records are held electronically; the only paper records it holds are personal notes made by individuals in notebooks. The records searched in June 2021 were emails, planning database records (DPS3), files held on shared drives, files held on laptop hard drives, and individuals' paper notes. The search function in Outlook was used to find all emails relating to the case, in both individual email accounts and the team account. All emails found were declared, after duplicates were removed, i.e., some emails were addressed to more than one person, therefore duplicates were removed to prevent confusion for the customer. DPS3 – The search facility in DPS3 was used to find all records. The search fields used were 'EA ref' 'their ref', 'description' and 'site address', to ensure no records were missed. Again, the results were screened for duplicates.
19. In relation to files held on shared drives, the search function on Windows File Explorer was used to find relevant files using the references from DPS3 as search terms. In relation to files held on laptop hard drives, EA staff are required not to save business files on their laptop hard drives, however all staff who have had any involvement with the site/customer were asked to search their hard drives using the Windows file explorer search function. Any files found were declared.
20. The EA also stated that all staff who have had any involvement with the site/customer were asked if they held any paper notes. No staff had relevant paper notes. No other companies or organisations stored information on behalf of the EA and the EA does not hold paper copies of e-mails.
21. The EA also informed the Commissioner that there is no business purpose for it to create or hold such information and there is no statutory requirement for all conversations to be minuted, or for all thought processes and deliberations to be recorded. It also stated that it does not hold other information which is similar to that requested.

## **The Commissioner's view**

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22. The Commissioner's role is not to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it.
23. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no further relevant information. However, as explained earlier in this notice, the Commissioner is required to make a judgement on whether further information is held on the civil standard of the balance of probabilities.
24. In reaching his decision in this case, the Commissioner has taken account of all submissions and explanations provided.
25. The Commissioner accepts that the requested information is clearly of interest to the complainant and that he considers that further information must be held somewhere.
26. However, having considered the EA's response, and on the basis of the evidence provided to him, the Commissioner is satisfied that, on the balance of probabilities, at the time of the request, the EA did not hold further information falling within the scope of the complainant's request.

## Right of appeal

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27. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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**