

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

Date: 12 December 2022

Public Authority: Milton Keynes Council

Address: Civic Centre
1 Saxon Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant has requested copies of structural drawings from Milton Keynes Council.
2. The Commissioner's decision is that Regulation 13 (personal information) is not engaged for some of the information. The Commissioner has also decided that, on the balance of probabilities, no further information is held, which is in scope of the request. The Commissioner also finds that the council has breached regulations 14 and 5(2) in its handling of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the documents referred in this decision notice as 34, 36, 37 and 38 to the complainant if it has not already done so.
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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 October 2021 the complainant requested information from Milton Keynes Council ("the council") in the following terms:

Regarding: 42 Portland Drive, Willen, Milton Keynes MK15 9JP ('the property').

"This email is a request for information that you hold in line with the Environmental Information Regulations 2004 ('EIR') in relation to the property. I am requesting that you provide all revised structural drawings that were submitted to your Building Control department after initial conditional approval was given on 13th March 2018. The reference for this application is 17/15969/DOM. It has been confirmed to me by multiple sources, including one of your Building Control department inspectors, that such information exists and is held by you."

6. The council responded on 5 November 2021. It refused the request on the basis that the information was already available in the "disclosure log".
7. The complainant requested an internal review on 6 November 2021. Stating "I have searched the link you provided and the information requested is not publicly available in your disclosure log. They all relate to a planning issue which is not the subject of my request. I would like to be explicit that my request is for information held by your Building Control department. The request is for revised structural drawings that were submitted to your Building Control department after initial conditional approval was given on 13th March 2018. The reference for this application is 17/15969/DOM."
8. The council sent the outcome of the internal review on 30 November 2021. It upheld its original position and added the statement: "with the reference number you provided, the requested document can be viewed in the planning public register". It provided a screenshot with a number of documents from 2017 and one in particular highlighted, also dated 2017.
9. The complainant responded on the same day, 30 November 2021, and stated: "You have just sent me a screenshot demonstrating a planning drawing uploaded on 23rd October 2017. This has no relevance or bearing on my request at all..."
10. On 24 January 2022 the council provided a further internal review, it advised that previous responses were incorrect, and gave a revised position. The council stated that it held two sets of drawings which are

within the scope of the request, being new or revised drawings submitted since conditional approval was given on 13 March 2018. The council then disclosed one drawing, named "Balcony Railings" and withheld one drawing on the basis of Regulation 13 of the EIR.

Scope of the case

11. The complainant contacted the Commissioner on the 18 December 2021 to complain about the way the request for information had been handled. They disputed the application of Regulation 13 to withhold information. The complainant also advised that they considered the disclosed "Balcony Railings" drawing was unrelated, stating "it does not come within the category of "revised structural drawings" as per my request."
12. The complainant is concerned that the withheld secondary set of drawings may not relate to "revised structural drawings", thus being outside of the scope of the request.
13. The complainant is also dissatisfied with the councils handling of the request, stating: "The initial response and internal review were extremely poorly handled as it appears that the Council did not actually read my request and carry out a proper internal review. This led to the provision of irrelevant information and an internal review which was not carried out properly."
14. The scope of this case is to consider whether the council was correct to withhold information on the basis of Regulation 13, and whether it holds any further information within the scope of the request.

Reasons for decision

Regulation 13 – personal data

15. Regarding the information withheld on the basis of Regulation 13, the council referred the Commissioner to the decision notice FS50872516¹. The Commissioner notes that the decision notice ordered the disclosure of the following documents, which the council has confirmed are in

¹ [FOIA-EIR decision notice template \(ico.org.uk\)](https://ico.org.uk/foia-eir/decision-notice-template)

scope of this request: (FS50872516 document identification numbers shown in brackets)

- Helical Stair Calculation Sheet (34)
- W135887-03 (36)
- W135887-04 (37)
- W135887-K1-ben (38)

The Commissioner therefore requires the council to disclose the documents 34, 36, 37 and 38 to the complainant if it has not already done so.

16. The council advised that the remaining withheld document named "W135887- "Revised Stairwell Drawing" is a summation of the above four documents plus one other identified as document 35. The application of Regulation 13 was upheld in FS50872516 for document 35. The Commissioner has no reason to overturn his previous decision, therefore the council should disclose this document with any information relating to document 35 redacted.

Regulation 12(4)(a)

17. The council argues that it does not hold any further information falling within the scope of the request, Regulation 12(4)(a) (information not held) therefore applies.
18. The Commissioner must decide whether, on the balance of probabilities, the public authority holds any further information which falls within the scope of the request.

The complainant's position

19. The complainant believes the council holds further information within scope of the request.
20. The complainant argues that Building Control records must be held for a minimum period of 15 years according to the Building Control Performance Standards² which state "All records relating to the building control service provided to individual projects shall be stored in a

² [Title \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

retrievable format and wherever practicable electronically by every Building Control Body for a minimum period of 15 years.”

21. The complainant states that the council should hold at least three different sets of revised structural drawings that were submitted after 13th March 2018. They state that details of these revised structural drawings are believed to be as follows:
 - A revision to the loft area to accommodate living space and increased structural load in this area.
 - A revision to changes in the layout, size and position of windows and door spaces.
 - A revision to the roof with changes to the structural steelwork.
22. The complainant states that it has been confirmed by the structural engineer who prepared the drawings originally, that the council holds the first two revisions of the above. They state this has been corroborated by one of the council’s former Building Control inspectors, who carried out various inspections at the property during the initial stages of construction and requested the submission of revised structural drawings. They state that this is also evidenced in the council’s own Building Control notes which are available on the council’s website.
23. The complainant states that they understand that the third set of revised structural drawings, relating to changes to the roof steelwork, were so significant that they must be held by the council. Otherwise, there must be a rational explanation provided as to why they are not held.

The council’s position

24. The council advised that the Building Control team undertook searches of their emails, all files held in their document management system, and SharePoint libraries. It advised that there is no other location which building control data could reasonably be expected to be found. The searches found no further information in relation to the request, including the specific three revisions specified by the complainant above.
25. The council advised that the building control inspector referred to by the complainant was a contractor who left the council some years ago. It stated that none of their emails or files were retained following their exit, as there was no reason to, aside from the records saved on to the document management system.

26. The council advised that it cannot comment on what that individual may have received, or done with files, if they had existed, only that the council does not hold them now and has not since the original request was received on 30 October 2021.
27. By way of a further explanation, the council advised that the roof area of the property is not, for building control purposes, living accommodation. It is a two-storey dwelling with storage attic space. The council is not therefore required to hold drawings of this space. It is therefore possible the inspector viewed but did not require a copy of the drawings.
28. The council advised it is confident that all the necessary searches were undertaken which would be reasonably expected to find any information in the scope of this request, it explained:
 - Searches were undertaken of shared and individual mailboxes, document management systems, shared and individual drives of the Building Control department.
 - It is not expected that any information in relation to this request would be held outside of the Building Control department.
 - No information within the scope of the request was held locally, outside of its networked servers, and all networked areas were searched.
 - Search terms used included 42 Portland, 17/15969/DOM and the applicant and agent names for the property.
 - It is possible that such records could have been held as paper files initially, however these would be scanned and held electronically, and the paper copy destroyed.
 - The council is confident that no information within the scope of the request was ever deleted. It stated that the retention policy for such information is to keep the information for a minimum of 7 years.

The Commissioner's conclusion

29. The complainant has provided compelling arguments regarding why they consider further information should be held by the council. However the council confirmed it has carried out adequate and appropriate searches of its records in order to locate any relevant information which it holds, falling within the scope of the request for information.
30. The council also offered an explanation that Building Control would not be required to hold specifications regarding the roof area of the property, because it is not defined as living accommodation (rather it is

a storage area). It suggested that the building inspector may have viewed such information but would not be required to keep it. Finally that the building inspector had subsequently left so any of their locally stored records or emails would not be held.

31. The EIR is concerned only with providing access to information that is held by a public authority, therefore the Commissioner can not decide upon information which should be held.
32. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
33. On this basis, the Commissioner has concluded that, on the balance of probabilities, no further information is held by the council that falls within the scope of the complainant's request

Procedural - Timescales

34. Regulation 14(1) requires a public authority to issue a valid refusal notice within 20 working days, and Regulation 14(3) requires the relevant exemption to be cited in the refusal notice.
35. Regulation 5(2) requires that information shall be made available as soon as possible and no later than 20 working days after the receipt of the request.
36. In this case the council did not issue a valid refusal notice until the second review of 24 January 2022, which was outside of the required 20 working days. It therefore breached regulation 14.
37. The council also provided information in scope of the request at the time of the second review.
38. As the council failed to respond to make the information held available within the appropriate timescale the Commissioner finds that the council also breached regulation 5(2).
39. No steps are required.

Right of appeal

40. 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

41. 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.
42. 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

Janet Wilson
Senior Case Officer
Information Commissioner's Office
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Water Lane
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