

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

### **Decision notice**

**Date:** 27 May 2022

**Public Authority:** Hastings Borough Council  
**Address:** Hastings Town Hall  
Queens Square  
Hastings  
TN34 1TL

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

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1. The complainant has requested information held by Hastings Borough Council (the council) that relates to a retaining wall constructed by the owners of a local caravan park.
2. The Commissioner's decision is that, on the balance of probabilities, the council has now provided all the information that is held that is relevant to the complainant's request.
3. However, as the council only located and released the information following the Commissioner's intervention, and much later than the required 20 working days, it has breached regulation 5(2) of the EIR.
4. The Commissioner does not require the council to take any steps as a result of this decision notice.

#### **Request and response**

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5. On 9 November 2020, the complainant wrote to the council and requested information in the following terms:

'This request concerns the construction of retaining walls at Rocklands Caravan Park Hastings TN35 5DY and their impact on the Scheduled Monument.

A letter to a local resident dated the 11th June 2020 (reference ENF.20.00076) from HBC Planning Enforcement Officer [Officer A] states that:

"I have also contacted Historic England for their advice on whether the retaining wall causes harm to the neighbouring Ancient Monument. I will try to arrange for a member of Historic England to visit the site with me if they have the resources or send them photos to analyse if necessary"

Please provide the following information under EIR:

1. A copy of the correspondence (in any form including images) with Historic England cited by [Officer A].
2. Copies of all correspondence (in any form including images) between HBC and HE following on from the initial contact with HE.
3. Details of any site visits that took place.
4. Copies of any site visit notes recorded.'
6. On 18 December 2020, the council provided information it stated was relevant to parts 1 and 3 of the request; it advised that it did not hold information relevant to parts 2 and 4 of the request.
7. On 2 January 2021, the complainant requested an internal review, and the council provided its response on 24 February 2021. The council stated that it understood that the complainant had recently been corresponding with one of its officers, and that 'discussions and questions raised have been answered.'
8. The council also confirmed that a site visit had taken place at the beginning of December (which the Commissioner notes is after the date of the complainant's request), but that this was with regard to another matter, and was not with Historic England (HE). The council said it had not been considered necessary to have a site visit with HE to determine what enforcement action should be taken, but rather to enable HE to be aware of any breaches in its own legislation.

## Scope of the case

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9. The complainant first contacted the Commissioner on 9 March 2021, to raise concerns about the council's handling of their request.
10. The complainant believed that they had not received all the information held by the council that was relevant to their request. They also stated that some of the information that had been provided (a letter sent by HE to the council in 2014) did not fall within the scope of the request.
11. The complainant was also concerned that the council had advised that it was unable to provide copies of emails held by Officer A, as their 'email has been deleted'.
12. The complainant also questioned the council's decision to redact the names of officers contained within a brief internal file note provided on 18 December 2020, in response to the request. However, it would appear that this file note was created on 25 November 2020, and therefore after the request was made. It also does not form correspondence between the council and HE, nor is it about any specific site visit that actually took place.
13. The Commissioner is therefore satisfied that the information contained within the internal file note does not fall within the scope of the request, and it will not be considered further within this decision notice.
14. Following the Commissioner's intervention, the council reviewed its handling of the request, and located two emails sent between Officer A and HE on 12 June 2020, which it has now provided to the complainant.
15. However, the complainant has said that the council has still failed to provide all the information requested, or give an explanation as to why it is not held.
16. The Commissioner will therefore decide whether, on the balance of probabilities, the council holds any further information that is relevant to the complainant's request.

## Reasons for decision

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### **Regulation 5(1) - Duty to make environmental information available on request**

17. Regulation 5(1) of the EIR states that 'a public authority that holds environmental information shall make it available on request.' This is subject to any exceptions that may apply.

18. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to establish what information within the scope of the request it held, and any other reasons offered to explain why further information is not held. He will also consider any reason why it is inherently likely, or unlikely, that further information is not held.
19. 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.
20. The council has advised that email accounts are not the official repository for planning records and cases. All official records relating to a case, including any emails that have a bearing on the case will be added to, and stored in, the planning case management system.
21. The council has confirmed that Officer A left the council in July 2020. It states that when an officer at the council leaves, the department manager will nominate individuals (in this case initially two officers, but then one also left the council) to have ongoing access to the departing officer's email account.
22. The council has confirmed that the remaining officer who had been provided with access to Officer A's mailbox had believed the inbox was closed and had been deleted; it has apologised for this error.
23. The council has confirmed that whilst Officer A's mailbox was deleted in July 2021, the technical team are able to conduct forensic searches on deleted emails and accounts for up to 7 years after email receipt. As a result of a recent forensic search, the two additional emails that have recently been provided to the complainant were located.
24. The first email, dated 12 June 2020, is a brief email from Officer A asking if a member of the HE team would like to join him on a visit to the site. The second email is an automated acknowledgment from HE which confirms receipt of that email.
25. With regard to part 3 and 4 of the request, the council has advised that site notes are taken at the discretion of the officer, and when this occurs, the notes are uploaded on to the IT system.
26. The council has advised that two officers from the council visited the relevant site on 9 September 2020, to consider various issues that had been raised by the complainant. This includes matters that relate to the retaining wall. The council has confirmed that the officers took notes in

the form of a letter, which was then sent to the complainant on 14 September 2020.

27. The council has confirmed that it does not hold any other records that relate to the site visit of 9 September 2020, or any other site visit that is relevant to the complainant's request. It has also made it clear that the council has not been able to conduct a site visit with HE relating to the retaining wall.
28. It is apparent that the complainant believes that more information should be held. The Commissioner appreciates that (as stated in the complainant's request) Officer A indicated that HE had been contacted for advice; however, he is mindful of the possibility that this was done verbally, rather than by email.
29. Furthermore, the email recently released to the complainant, which was sent by Officer A to HE on 12 June 2020, (the day after the letter to the local resident that the complainant's request refers to), requests a possible joint visit, stating, 'I would like advice on whether the works [to the retaining walls] cause harm'. There is no reference to any previous request for, or the receipt of, advice from HE on this matter.
30. 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.
31. Having considered the matter, and the additional searches that have now been carried out by the council, there is no evidence available to the Commissioner that would indicate that any further information that is relevant to the complainant's request should be held, or would be likely to be held, and that the council's position is incorrect.
32. Given the above, the Commissioner has concluded that, on the balance of probabilities, the council does not hold any additional information falling within the scope of the request.
33. However, as the council failed to provide the complainant with the information that it holds that is relevant to the request within 20 working days, the Commissioner has found that it has breached regulation 5(2) of the EIR.

## Right of appeal

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34. 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: 0300 1234504

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)

35. 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.
36. 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 .....**

**Suzanne McKay**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**