

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

### **Decision notice**

**Date:** 17 March 2023

**Public Authority:** Hertford Heath Parish Council  
**Address:** PO Box 399  
Hertford  
SG13 9LA

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

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1. The complainant, a law firm acting on behalf of a client, requested information held by Hertford Heath Parish Council (the parish council) relating to a Neighbourhood Plan.
2. The parish council advised that it believed that it had provided all of the information held in response to the request, with the exception of a small amount of information which it confirmed had been withheld under regulation 13 – third party personal data, of the EIR.
3. During the Commissioner's investigation, the parish council then identified and released some additional information to the complainant.
4. The Commissioner has decided that the withheld information does not actually fall within the scope of the request. Furthermore, the Commissioner is satisfied that the parish council has, on the balance of probabilities, now identified and released all of the information that it holds, or that is held on its behalf, which is relevant to the request.
5. However, as the parish council failed to disclose all the relevant information within 20 working days, and also did not carry out an internal review within the required 40 working days, the Commissioner has found a breach of regulation 5(2), and regulation 11(4), of the EIR respectively.
6. The Commissioner does not require further steps.

## Request and response

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7. On 13 July 2021, the complainant wrote to the parish council and requested information in the following terms:

“1. Background to the request

1.1 The Council carried out a pre-submission consultation in respect of its draft neighbourhood plan between October and December 2020, known as Regulation 14 consultation.

1.2 The Council is currently in the process of carrying out Strategic Environmental Assessment (“SEA”) of its proposals for the neighbourhood plan.

2. Description of information requested

2.1 The applicant wishes to be provided with a copy of the following material:

2.1.1 a copy of the Scoping Opinion prepared by or for the Council in respect of the SEA;

2.1.2 a copy of the instructions provided to AECOM by the Council in respect of the Scoping Opinion and SEA process, including a copy of all communications and correspondence (including but not limited to any records of such communications such as meeting notes, diary entries, telephone notes, reports, e-mails, notes and memos) between any representative of the Council and AECOM; and

2.1.3 a copy of all communications and correspondence (including but not limited to any records of such communications such as meeting notes, diary entries, telephone notes, reports, e-mails, notes and memos) between any representatives of the Council and any other third party in respect of the Scoping Opinion and SEA process.”

8. The complainant was not satisfied with the response that they received, and they requested an internal review.
9. Following the internal review, the complainant then raised concerns with the Commissioner, still believing that additional information was held which should have been released in response to their request.

10. On 14 June 2022, the Commissioner issued decision notice [IC-133998-Y2J0](#). He concluded that the parish council had not conducted adequate searches to identify all the information held that was relevant to the complainant's request. Given this, the Commissioner decided that the council must reconsider, and issue a fresh response, to the request.
11. The parish council then issued a further response to the complainant, stating that it believed that all the relevant information that it held had either been released, or was publicly available. However, the parish council went on to confirm that it should have previously advised that it was relying on regulation 12(3) and 13 of the EIR, as its basis for withholding third party personal data contained within a number of emails that had been disclosed in response to the request.

### **Scope of the case**

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12. The complainant believes further information is held that should have been disclosed in response to their request; they have also queried the parish council's decision to redact information from certain emails before their release.
13. During the Commissioner's current investigation, the parish council carried out a further review of its handling of the request, now taking into account information that was held on its behalf by a third party (who was commissioned by the parish council to provide certain services in respect of the Neighbourhood Plan). The parish council has gone on to release some additional information to the complainant.
14. The Commissioner will decide whether, on the balance of probabilities, the parish council holds any additional information that is relevant to the request. He will also consider whether the parish council was correct to have redacted some information contained within a small number of emails before their release.

### **Reasons for decision**

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

15. 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.

16. 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 authority to establish what information within the scope of the request it held, and any other reasons offered by the public authority to explain why further information is not held. The Commissioner will also consider any reason why it is inherently likely, or unlikely, that further information is not held.
17. The parish council has redacted a small amount of information contained within a number of emails, stating that it is the personal data of third parties and that disclosure would breach one of the data protection principles.
18. It is the Commissioner's view that some of the information contained within the emails that have been released to the complainant in a redacted format do not fall within the scope of the request. For example, there are private comments made which do not relate to the matters described within the request. In addition, the emails contain discussions about the costs of services, and similar, provided by a third party to the parish council. Whilst the services that the third party stated that they could provide, or did provide, may relate to the scoping opinion, or the SEA process, the Commissioner is satisfied that discussions about the actual charges and costs incurred by the parish council for such services do not fall within the scope of the complainant's request.
19. Therefore, the Commissioner does not regard it to be necessary to consider the parish council's application of regulation 13 to the redacted information. This is because he is satisfied that such information does not fall within the scope of the request.
20. Following the recent release of further information by the parish council, the complainant raised concerns that four sets of information which they believed to be held had still not been released.
21. The Commissioner understands that the parish council has now provided a copy of one of these sets of information to the complainant; this was a copy of an email, which it has confirmed was not previously released due to an oversight.

22. The three remaining sets of information which the complainant states they still require are as follows:
- “The first draft of the SEA report which was attached to the email of 1 July 2021;
  - The documents contained within the Dropbox link within the email dated 14 April 2021;
  - Correspondence from HHPC [the parish council] to East Herts District Council regarding permission for a focused SEA.”
23. With respect to the first bullet point, the parish council has confirmed that the SEA report, which was attached to the email of 1 July 2021, is the full and final version that is already in the public domain. It has confirmed that it has had this verified by its consultant.
24. The Commissioner notes that the parish council previously directed the complainant to information available online which it had believed to be relevant to their request, and he is aware that the complainant has accessed the published SEA report; therefore, the Commissioner does not require the parish council to take any steps in this regard.
25. With respect to the documents referred to in the second bullet point, the parish council has confirmed that the link to the drop box is no longer accessible; it states that this drop box was set up solely for the purpose of transferring information to AECOM, and no longer exists. Therefore, it states that this information is not held.
26. The parish council has also advised that it holds no recorded information relevant to the third bullet point. It has said that it would not have had an exchange with East Herts Council in terms of the need for permission for a focussed SEA, as such permissions were not required, and were therefore not sought. The parish council has confirmed that East Herts Council has to provide the parish council with an SEA Determination, and that this has been published.
27. The parish council has explained that since the start of the Neighbourhood Plan process there have been many changes of councillors; this includes 4 changes to the Chair, and 4 changes of clerk. It has said that the current parish councillors conduct business using parish council laptops and official email accounts (although the parish council has confirmed that it was recently found that a councillor had not fully complied with this process – which it states it has addressed). However, the parish council has said that before the current procedures were introduced, some previous parish councillors may have sent correspondence about the Neighbourhood Plan process using personal email addresses; it is unable to say for certain whether this is the case,

but has confirmed that from the searches it is able to carry out on its current systems, no additional information has been found.

28. The parish council has also said that during the Covid-19 pandemic, some meetings were held virtually and were not always recorded; as a result, no minutes are held in relation to some meetings where the Neighbourhood Plan may have been discussed.
29. The parish council has confirmed that it has carried out searches to identify any relevant information. Following recent discussions with the Commissioner, it had a better understanding of its obligations and where information may be held on its behalf for the purposes of the EIR; it has now liaised with relevant third parties in order to obtain and release information held on its behalf that is relevant to the request.
30. The Commissioner is satisfied that the parish council has now taken proportionate steps to locate and provide the information that it holds, or which is held on its behalf. Given this, and without any substantive evidence to the contrary, the Commissioner has decided that, on the balance of probabilities, the parish council has now provided the information that it holds that is relevant to the request.

### **Procedural matters**

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31. The complainant submitted their request on 13 July 2021, but they have only recently been provided with some of the information that they required. As the parish council failed to provide all the relevant information within 20 working days of the receipt of the request, the Commissioner has found a breach of regulation 5(2) of the EIR.
32. The complainant requested an internal review on 10 September 2021, and the parish council provided its response on 12 November 2021. As the parish council failed to carry out an internal review within the statutory 40 working days, the Commissioner has also found a breach of regulation 11(4) of the EIR.

## Right of appeal

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33. 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)

34. 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.
35. 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**