

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

**Date:** 3 April 2024

**Public Authority:** Womenswold Parish Council  
**Address:** clerk.womenswoldpc@gmail.com

**Decision (including any steps ordered)**

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1. The complainant requested information about an Asset of Community Value. Womenswold Parish Council (the "council") responded but did not provide the information or cite a relevant exception.
2. The Commissioner's decision is that the council failed to provide a response in accordance with the EIR and breached regulation 5(2).
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
  - Either disclose the requested information to the complainant or issue a refusal notice in accordance with regulation 14 which specifies the reasons not to disclose the information requested.
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

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5. On 23 November 2023, the complainant wrote to Womenswold Parish Council (the "council") and requested the following information:

"I am predominantly looking for emails about me and my pub and the ACV from the last council meeting on 2nd Tuesday in November"

6. The council responded on 14 December 2023 stating:

"After careful consideration, we regret to inform you that your request for access to private casual conversations is denied based on the grounds of exemption due to the absence of a significant public interest."

7. On 15 December 2023 the complainant emailed the council, effectively asking it to carry out an internal review, and reiterated that they were seeking the following information:

" It is a written, email conversation deliberating whether or not to renew, ask to retract the existing Asset of Community Value listing on a property in the parish.

The deliberations are in the public interest as they reflect the views of the parish council on the matter.

Discussions amongst councillors on a parish matter should be in open forum and when not possible, should be minuted and the decision recorded.

Further there was advice sought from Canterbury City Council regarding said business."

8. On 15 December 2023 the council provide its internal review response, stating:

"This isn't the case. A Parish councils deliberate and take decisions at constituted meetings as per statute, and legal advice is exempt from FOI due to legal privilege."

## Scope of the case

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9. On 15 December the complainant contacted the Commissioner on to complain about the way their request for information had been handled.
10. The Commissioner has considered whether the council handled the request in accordance with the legislation.

## Reasons for decision

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### Would] the requested information be environmental?

11. Regulation 2(1) of the EIR defines environmental information as being information on:
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
  - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

12. Although he has not seen the requested information he notes that it is information relating to the designation of an "Asset of Community Value" ("ACV"). An ACV is defined as:

"...A building or other land is an asset of community value if its main use has recently been or is presently used to further the social wellbeing or social interests of the local community and could do so in the future. The Localism Act states that 'social interests' include cultural, recreational and sporting interests.

13. In view of this, the Commissioner considers the requested information is likely to be information on a measure, as defined in regulation 2(1)(c). It follows that the request falls to be considered under the EIR.

### **Duty to provide environmental information**

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

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

15. 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."

16. Regulation 14 of the EIR states:

(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) The refusal shall specify the reasons not to disclose the information requested, including—

(a) any exception relied on under regulations 12(4), 12(5) or 13; and

(b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

17. In this case the Commissioner considers that the council has failed to either disclose the information falling within the scope of the request that it holds and/or failed to issue a notice citing legitimate grounds for refusing to provide the information.

18. The Commissioner wrote to the council on 19 March 2024 and directed it to address these matters by 2 April 2024 but he received no response.
19. From the evidence provided to the Commissioner in this case, it is clear that the public authority did not deal with the request for information in accordance with the EIR. The Commissioner's decision is that the public authority has breached regulation 5(2) by failing to respond to the request in accordance with regulation 5(1) within 20 working days and it is now required to respond to the request in accordance with the EIR.

## Other matters

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20. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

### **Requests which identify a requester's personal information**

21. When receiving requests for information authorities should consider whether part or all of the information in question constitutes the requester's own personal data. For example, a request might specify information which relates to decisions made by an authority or information otherwise held which relate to an identifiable individual.
22. In such cases authorities should consider whether the request should be processed as a subject access request (SAR) under The Data Protection Act 2018<sup>1</sup>.

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<sup>1</sup> For further guidance on this issue, see here: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights/right-of-access/>

## Right of appeal

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23. 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)

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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