

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 May 2024

Public Authority: Great Wakering Parish Council
Address: Council Offices
Little Wakering Hall Lane
Great Wakering
Essex
SS3 0HH

Decision (including any steps ordered)

1. The complainant requested information about allotments and the decision to ban bonfires at allotments. Great Wakering Parish Council (the Council) disclosed some information and stated other information was not held. The Commissioner's decision is that, on the balance of probabilities the Council does not hold some of the information requested and therefore regulation 12(4)(a) of the EIR applies. The Commissioner does not require any steps to be taken.

Request and response

2. On 27 October 2023 the complainant wrote to the Council and requested information in the following terms:

"I am writing to request information under the Freedom of Information Act 2000. The information I request is;

1. How many complaints have the Parish Council had re bonfires at the Allotments in Great Wakering over the last 3 years. I would like to see all complaints, redacted if you prefer, to conceal the identity of the complainant as I only require numbers.

2. Records of dates and times that any consolation [sic] has taken place with any member of the Allotment Society within the last 12 months and the subject, if any, of the discussion.
 3. How many vacant plots there are on the allotment?
 4. The number of plots on the allotment where no one has tended the plot for over 12 months.
 5. How the Council arrived at the decision to ban bonfires as the Parish Council's published minutes of the meeting offer no clue, plus any committee minutes made at the time which are unpublished.
 6. Was a member of the Allotment Society allowed to give evidence at the meeting prior to or be at the meeting where the decision to ban bonfires was made?
 7. The matter of insurance has been raised over bonfires, where did this originate and I would like all documents relating to the insurance policies for the allotments for the last 3 years".
3. The Council responded on 20 November 2023. It provided information relating to questions 3 and 7. In respect of all other questions the Council stated that the information was not held in a recorded format.
 4. On 23 November 2023 the complainant expressed dissatisfaction with the Council's response to their request, and the absence of recorded information held. In respect of the insurance policy provided, the complainant stated that they were unable to see any reference within the documents provided by the Council that the policy relating to the Council, such as a certificate of insurance.
 5. The Council issued a further response on 5 December 2023 and provided a copy of the certificate of insurance.

Scope of the case

6. The complainant contacted the Commissioner on 19 December 2023 to complain about the way their request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any further recorded information falling within the scope of the request.

Reasons for decision

Regulation 12(4)(a) – information not held

8. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
9. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
10. 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 check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
11. The Council advised the Commissioner that information relevant to the request could be held electronically or in hard copy format. It advised that its Clerk and their assistant are long standing officers and are fully aware of the information that is held relating to allotments. Nevertheless the Council advised that comprehensive searches were carried out of relevant hard copy and electronic records, such as minutes, agendas and other correspondence to identify information relevant to the request. The Council confirmed that it does not record phone calls and it does not have any social media accounts.
12. In terms of the electronic searches conducted, the Council advised that the search encompassed information on all computers in use. The search terms used included; allotment, allotment holder, allotment society, bonfire, complaint, smoke, pollution and nuisance.
13. The Council advised that some records relating to part 1 of the request about complaints regarding bonfires may have been deleted in accordance with its retention policy. This is because old emails, particularly where the matter relates to a complaint which has been resolved, eg if a complaint had been received about a bonfire and the bonfire had been subsequently extinguished, are deleted. However, the Council confirmed that no information of this type has been destroyed since the request in this case was received. The Council also confirmed that any written complaints which may have been made about bonfires may also have once been held. However, again, such information is destroyed once the complaint is resolved.

14. The Council advised that it has routinely received complaints when bonfires are lit on the allotments, especially if a bonfire is lit on a fine day, when prevailing winds blow smoke towards nearby properties. Such complaints are generally received by telephone or in person to its offices. The Council confirmed that these complaints are dealt with immediately and steps taken to arrange for the bonfire to be extinguished. The Council does not produce any written information in relation to these verbal complaints and a record would only be made if an allotment holder refused to extinguish their bonfire, as this would then form the basis to terminate their tenancy agreement. No such action has been necessary to date.
15. In respect of part 2 of the request concerning consultation with the Allotment Society, the Council confirmed that no consultation with the Allotment Society had taken place in the last 12 months, either verbally, in person or in writing. The Council advised that the Allotment Society is a separate entity to the Council and it does not have any details of its membership. It also confirmed that allotment tenants are not required to be members of the Allotment Society.
16. Part 4 of the request is for the number of allotment plots which have not been tended for over 12 months. The Council advised the Commissioner that it undertakes inspections, as and when it is able to, but it would be impossible for the Council to determine which, if any of the approximately 200 allotments, have or have not been tended without 24 hour CCTV surveillance footage of each site. The fact that someone has paid rent does not necessarily mean that the plot has been tended. Any inspection may reveal an 'untidy' plot but that would not necessarily mean that no cultivation has taken place there between inspections due to the rate of vegetation growth. In light of this, the Council does not hold recorded information relating to part 4 of the request.
17. In relation to parts 5 and 6 of the request concerning the decision making process around banning bonfires on allotments, the Council advised the Commissioner that bonfires on allotment plots was deemed an issue as a result of an increased number of complaints it received verbally and/or in person regarding the impact of bonfires. This included complaints that allotment holders had left the site whilst fires were still burning, potentially leaving them to spread and cause harm. The issues were raised verbally with the Clerk and other officers over a period of time by members of the public, Councillors and during telephone conversations between the Council and its insurers. As a result, the matter was put on the agenda to be discussed at the Council meeting on 19 July 2023.
18. The Council confirmed that other than the reference to the decision within the minutes of its meeting on 19 July 2023 to remove a clause from allotment tenancy agreements to allow bonfires, no recorded

information is held about the decision making process. This is because the decision making process comprised entirely of a verbal discussion at the meeting itself, ie no papers were prepared to be discussed at the meeting. In line with normal practices, the resolution to remove the clause was voted on at the meeting and then the decision recorded in the minutes.

19. As the decision making process was undertaken verbally at this meeting, no member of the Allotment Society was invited to give evidence. However, the Council advised that the agenda for the meeting in question was displayed on its website and notice boards at least five days prior to the meeting. As the issue was discussed in the open session of the meeting any member of the public would have been able to attend if they wished.
20. The Commissioner finds the representations provided by the Council, as set out above, sufficiently explains why it does not hold the requested information.
21. Based on the evidence available to him, and in particular the searches undertaken and the other explanations provided by the Council as set out above, the Commissioner finds that, on the civil standard of the balance of probabilities, the Council does not hold any further recorded information relevant to the request.
22. When considering the public interest test, the Commissioner can only find that the public interest in maintaining the exception at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because the information is not held.
23. The Commissioner is therefore satisfied that regulation 12(4)(a) applies and he does not require Council to take any further steps in this case.

Right of appeal

24. 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

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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF