

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

### **Decision notice**

**Date:** 21 May 2024

**Public Authority:** Somerset County Council  
**Address:** County Hall  
The Crescent  
Taunton  
Somerset  
TA1 4DY

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

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1. The complainant has requested correspondences from Somerset County Council (the Council) which related to a specific planning application.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold any additional information in the scope of the request.
3. The Commissioner also finds that the Council breached regulation 5(2) by failing to disclose all the requested information within 20 working days.
4. The Commissioner does not require further steps.

#### **Request and response**

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5. On 10 October 2023, the complainant wrote to the Council and requested information in the following terms:

"I want to see copies of all other records/details the Council has on this application, including (but not exclusively) all correspondence between the Council and the agent, between case officers (there have been three – [names redacted]) and to and from any other staff such as line managers, the Council's Tree Officer and the Conservation Officer."

6. The Council responded on 16 November 2023. It provided the complainant with a copy of the requested information it held.
7. Following an internal review the Council wrote to the complainant on 21 December 2023 and 2 January 2024. It stated that it did hold further information and advised this would be disclosed.
8. The Council disclosed the further information it had located during its internal review to the complainant on the 9 January 2024.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 22 January 2024 to complain about the way their request for information had been handled.
10. During the Commissioner's investigation the Council located further documents and disclosed these to the complainant. Despite these further documents being located, the complainant was concerned that further information may be held by the Council.
11. The Commissioner considers that the scope of his investigation is to consider, on the balance of probabilities, whether the Council holds any additional information within the scope of the request.

### **Reasons for decision**

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#### **Is the requested information environmental?**

12. 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);

13. As the requested information relates to a planning application, the Commissioner is satisfied that it constitutes a measure under registration 2(1)(c) and that the request falls to be considered under the EIR.

### **Regulation 5 – duty to make environmental information available on request**

14. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
15. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

### **The Council's position**

16. The Council informed the Commissioner that there is a statutory requirement upon the Council to hold such information. Information directly related to the planning decision forms part of part 1 or part 2 of the open planning register under Town and Country Planning Act 1990. Key documents are retained indefinitely as part 2 of the open planning register. All of this information is part of the online application, apart from internal communications and administrative emails which are not part of the open planning register and therefore not routinely published to the case file.
17. The Council informed the Commissioner that any information within the scope of the request not already published would be stored

electronically. In order to comply with the request, the Council conducted searches on its Accolade planning and electronic document management systems. It searched for any information which fell into the scope of the request and was not already available on the Council's website.

18. The Council informed the Commissioner that it used the planning application reference number "3/21/22/086", the applicant's name and application name "Pam's Patch" when conducting searches.
19. One of the planning officers named in the request conducted a search for information held in their email accounts and was then asked to check locally on their OneDrive for information within the scope of the request.
20. The Council confirmed that the Planning Manager, the Tree Officer and the Conservation Officer were also asked to search their mailboxes.
21. Although the request specifically asked for any correspondence to or from line managers, the Council advised that as the request was exclusively in relation to a specific planning application, it was considered that the planning manager would be the only manager to hold information within the scope of the request. The Council informed the Commissioner that no other managers had been involved in the planning application at any point and would not hold information within the scope of the request.
22. The Council confirmed that the searches conducted did locate information within the scope of the request, this information has since been disclosed to the complainant and no further information is held by any of the members of staff.
23. In respect of the additional information it located both at internal review stage and during the investigation, the Council advised the Commissioner that prior to his investigation, it was believed that as the other two planning officers, who had been named in the request, had since left their roles at the Council their email accounts were no longer accessible. The Council advised that it had since discovered that this was not the case and the email accounts could still be accessed.
24. The Council confirmed that the information governance had since carried out a closed email account searches of the two former planning officers. This search identified further information within the scope of the request, which has since been disclosed. The Council confirmed that no further information was held in these email accounts.
25. The Council also conducted a search on the Chief Planning Officer's mailbox, the complaints SharePoint site and the planning mailbox. The planning mailbox was searched to ensure that no documents or emails

which may have been sent to and from a general email address but still fell into the scope of the request were missed. The Council advised that information within the scope of the request had been identified during their searches and this information had now been disclosed to the complainant.

26. In addition to these searches, the Council also requested the service lead in planning for Freedom of Information to carry out a search for any additional information within the scope of the request.
27. The Council concluded that it had no record of any of any of the requested information been destroyed or deleted and all the requested information has now been disclosed.

### **The complainant's position**

28. The complainant advised the Commissioner that whilst the Council had now provided more information within the scope of the request and outlined the searches it had conducted on the Planning Manager's email account, the complaint was still concerned that there were no emails from one of the planning officers to the planning manager.
29. The complainant also advised that, in their opinion, the Council had not applied itself rigorously to the request for information and many emails were not disclosed until the Commissioner's intervention in the matter.

### **The Commissioner's decision**

30. Whilst the Commissioner acknowledges the complainant's concerns regarding the failure to disclose information at the time of the request, he is satisfied that the searches conducted by the Council are the most appropriate to locate the requested information.
31. It is disappointing that the Council's original searches were clearly inadequate. The drip feed of information has, understandably, made the complainant less willing to accept the Council's word that has now disclosed everything it has. However the Commissioner also notes that complainant has been unable to point to any definitive evidence that undermines the Council's claims or that demonstrates further information is, as a matter of fact, held.
32. The Commissioner notes that the Council has now checked all three named planning officers' email accounts as requested by the complainant and the inbox of the planning manager has also been checked.
33. Had any additional information within the scope of the request been held, the Commissioner is satisfied that the search terms used by the

Council would have located any additional information within the scope of the request.

34. On the balance of probabilities, the Commissioner is therefore satisfied that the Council has now disclosed all the information it holds within the scope of the request.

### **Procedural matters**

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

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

36. 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.”

37. From the evidence provided to the Commissioner in this case, it is clear that the Council did not provide all the relevant environmental information it held when it initially responded. The Council’s initial response to the request was also not issued within 20 working days of the request.

38. The Commissioner’s decision is that the Council breached regulation 5(2) by failing to disclose all the requested information within 20 working days.

### **Other matters**

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39. The Commissioner would like to take this time to remind the Council that it should be ensuring that thorough and comprehensive searches have been carried out at the point it issues its first response to the request – and not only once the requester asks for an internal review or complains to his office.

## **Right of appeal**

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

**Roger Cawthorne**  
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