

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

Date: 24 September 2018

Public Authority: Ansty Parish Council
Address: c/o Rugby Borough Council
Town Hall
Evereux Way
Rugby
Warwickshire
CV21 2LA

Decision (including any steps ordered)

1. The complainant has requested a copy of a report carried out by a firm of chartered surveyors
2. The Commissioner's decision is that Ansty Parish Council ("the Parish Council") does not hold the requested information. However, it failed to issue a response within 20 working days and failed to carry out a reconsideration of its response within 40 working days and thus breached Regulations 5(2) and 11(4) of the EIR.
3. The Commissioner does not require the Parish Council to take any further steps.

Request and response

4. On 8 September 2016, the complainant wrote to the Parish Council and requested information in the following terms:

"Contained within the minutes of Ansty Parish Council meeting minutes of 17th February 2015 there is contained a statement that

Ansty Parish Council have ratified the adoption of the Chartered Surveyors Report. Please provide a copy of the report as adopted."

5. The Parish Council responded on 22 February 2017 and supplied some information.
6. The complainant then contacted the Parish Council on 13 September 2017 to complain that the information that had been provided was not that which he had requested. The Parish Council carried out an internal review and informed the complainant on 17 November 2017 that it did not hold the requested information.

Scope of the case

7. The complainant first contacted the Commissioner on 1 December 2016 to complain about the way his request for information had been handled. The Commissioner's intervention was required, both at the response and the reconsideration stage, in order to generate appropriate responses from the Parish Council.
8. The complainant contacted the Commissioner on 29 October 2017 to ask the Commissioner to investigate whether or not the Parish Council held the requested information.
9. The scope of the Commissioner's investigation has therefore been to determine whether the requested information was held.

Turmoil at the Parish Council

10. After opening her investigation into this complaint, the Commissioner learnt that Ansty's parish councillors had resigned *en masse* – as had the Parish Clerk. A further, temporary, clerk resigned during the investigation.
11. As the Parish Council existed in name only, the Commissioner had considerable difficulty in establishing and maintaining contact with a person who was able to issue a response on the Parish Council's behalf. This caused several delays in the case.
12. Rugby Borough Council ("the Borough Council") has since exercised its powers under Section 91 of the Local Government Act 1972 to appoint temporary councillors and ensure that the functions of the Parish Council are carried out. The Borough Council has been provided with all the information which Ansty Parish Council held and the analysis below is

based on the information which has been supplied by the Borough Council.

Reasons for decision

Is the requested information environmental?

13. 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);*

14. For obvious reasons, the Commissioner has not seen the requested information, but has been able to form of view of whether such information, if it were held, would be environmental. As the requested information is the report of a chartered surveyor and was originally carried out in relation to Green Belt land, the Commissioner believes that it is likely to be information on the elements of the environment

and/or measures affecting those elements. For procedural reasons, she has therefore assessed this case under the EIR.

Regulation 5(1) – Held/not held

15. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"
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. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
17. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
18. The turmoil at the Parish Council has meant that a considerable amount of information which was previously held by or on behalf of the Parish Council has been lost.
19. The Borough Council informed the Commissioner that the information which it had "inherited" from the Parish Council consisted of a single box of files and some emails.
20. The Borough Council has searched both the emails and the files that were held in hard copy and the requested information was not found.
21. It is frustrating for the Commissioner that the passage of time and the turmoil at the Parish Council have meant that she is unable to offer any reasoned judgement of what information was held at the point that the request was first made. All parties bear some responsibility for the delays which have led to this decision notice being issued some two years after the request was first made.
22. The Commissioner has therefore only been able to consider whether the requested information is *currently* held by the Parish Council. This approach is far from ideal but it represents the only practical solution.
23. It is clear from the discussions that the Commissioner has had with the Borough Council that the Parish Council now only possesses a tiny amount of information. As the remaining stored information has been searched for the presence of the requested document, without success,

the Commissioner is left with little option but to conclude, on the balance of probabilities, that the Parish Council does not hold the requested information. She offers no opinion as to the information that was held at the time of the request.

Procedural Matters

Timeliness of response

24. Regulation 5(2) states that such information shall be made available “as soon as possible and no later than 20 working days after the date of receipt of the request.”
25. The information provided to the Commissioner shows that the Parish Council did not respond to the request until nearly 5 months after it was made – and only after her intervention. The Commissioner considers that this is an appalling delay in responding to a request for a single document to which no exceptions needed to be applied. She finds that the Parish Council breached Regulation 5(2) of the EIR

Reconsideration (internal review)

26. Regulation 11 of the Regulations states that:
 - (1) *Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant’s request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
 - (2) *Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
 - (3) *The public authority shall on receipt of the representations and free of charge—*
 - (a) *consider them and any supporting evidence produced by the applicant; and*
 - (b) *decide if it has complied with the requirement.*
 - (4) *A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
 - (5) *Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
 - (a) *the failure to comply;*

- (b) the action the authority has decided to take to comply with the requirement; and*
- (c) the period within which that action is to be taken.*

27. The complainant in this case took 7 months, from receiving his initial response, to submit his internal review request. The Parish Council was therefore under no statutory obligation to carry out an internal review – however, having agreed to carry one out, it should have informed the complainant of the outcome within 40 working days.
28. On 27 October 2017, the Parish Council wrote to the Commissioner setting out its position in relation to the requested information. Because this correspondence was only copied to the complainant, the Commissioner does not consider that it constituted a proper internal review. She has therefore taken the Parish Council's correspondence to the complainant of 17 November 2017 to be the outcome of the internal review. As this was issued 43 working days after the request for an internal review was made, the Parish Council has therefore breached Regulation 11(4) of the EIR.

Other matters

29. The Commissioner wishes to place on record her gratitude to the staff of Rugby Borough Council for their assistance in bringing this investigation to a conclusion.
30. The Commissioner also wishes to express her appreciation for the patience which the complainant has displayed in the face of the delays which have occurred whilst addressing the original complaint.
31. The complainant has invited the Commissioner to consider whether Rugby Borough Council might hold the information instead. The Commissioner declines to do so. The request was made to Ansty Parish Council and the Commissioner limits herself to the request which was made. It is open to the complainant to make a fresh request to the Borough Council for the information.

Right of appeal

32. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
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