

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

Date: 8 June 2020

Public Authority: Milton Keynes Council
Address: Civic Offices
1 Saxon Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant has requested information in relation to a planning application and an associated lighting condition.
2. The Commissioner's decision is that Milton Keynes Council has, on the balance of probabilities, located all the information held in scope of the request. The Commissioner's also finds that the council was entitled to rely on the exceptions at regulation 12(4)(e) and regulation 13 to withhold information. However, the Commissioner finds that the council breached regulation 5(2) in failing to respond to the request within 20 working days.
3. The Commissioner does not require any steps.

Request and response

4. On 11 May 2019 the complainant requested information from Milton Keynes Council ('the council') in the following terms:

"I am writing to make a request for all the information to which I am entitled under the Freedom of Information Act 2000. [Numbering added by ICO]

Please send me the following information in relation to the application to discharge the lighting condition 19/01031/DISCON:

- [1] Copies of correspondence between the Council and the applicant / applicant's agents relating to the lighting scheme for the above application*
- [2] Copies of correspondence between Officers in the Council relating to the lighting scheme after 1 April 2019*
- [3] A record of the time/date and any notes of telephone calls received from or made to the applicant/applicant's agents to Officers relating to the lighting scheme for the above application*
- [4] A copy of the Case Officer's Report for the above application*
- [5] A copy of the Case Officer/Team Leader's qualifications and experience in assessing lighting plan schemes*
- [6] A copy of the Council's policy and procedure relating to the consultation process for discharge of conditions.*

I would like the above information to be provided to me as electronic copies.

If this request is too wide or unclear, I would be grateful if you could contact me as I understand that under the Act, you are required to advise and assist requesters.

If the release of any of this information is prohibited on the grounds of breach of confidence, I ask that you supply me with copies of the confidentiality agreement and remind you that information should not be treated as confidential if such an agreement has not been signed."

5. The council responded on 19 July 2019, in relation to each request item it:

- [1] Provided the requested information, stating it had excluded anything that was publicly available.
- [2] Provided some information but withheld the remainder on the basis of FOIA section 42 - Legal professional privilege.
- [3] Denied holding the requested information.

- [4] Provided a *"file note held by the officer"* and denied holding any further information.
 - [5] It refused to provide the requested information on the basis FOIA section 40(2) - Personal information.
 - [6] Denied holding the requested information. It stated *"MKC follows the guidance contained within the Development Management Procedure Order 2015 legislation which is publicly available."*
6. The complainant requested an internal review on 20 July 2019 on the grounds:
- [2] Further information must be held stating: *"We are aware of other electronic communication between Officers in relation to this application that has not been disclosed. One example of this, Officers provided a chronology of events to the Council's Deputy Chief Executive, Paul Simpson"*; and disputing the councils reliance on section 42 to withhold information.
 - [3] Some information must be held.
 - [5] Disputing the council's reliance on the exemption at FOIA section 40(2) to withhold information.
7. Following an internal review the council wrote to the complainant on 16 August 2019. It upheld its original position.
8. Following correspondence from the Commissioner, the council wrote to the complainant on 17 January 2020. It advised that it had reviewed the request under the EIR and had revised its response accordingly; it disclosed some further information in relation to [1] and [2], with any personal information withheld on the basis of regulation 13.

Scope of the case

- 9. The complainant initially contacted the Commissioner on 30 August 2019 to complain about the way their request for information had been handled. Specifically that *"the request response was incomplete and included exemptions that I did not agree with."*
- 10. The Commissioner contacted the complainant following the council's further disclosure in relation to [2] of 17 January 2020. The complainant advised that they *"do not believe the disclosure by Milton Keynes Council is complete."*
- 11. During the course of the investigation the council agreed that the request should have been dealt with under the EIR. Additionally it changed the basis for withholding information in scope of [2] to apply

regulation 12(4)(e) - internal communications; it applied regulation 13 - third party personal data to some redacted information; furthermore it also it stated that some information was redacted because *"it falls outside of the scope of the request / is not relevant."*

12. The Commissioner considers that the scope of this case is to establish whether the council has correctly engaged the exception at regulation 12(4)(e) with regard to [2]; and the exception at regulation 13 with regard to [2] and [5]; and whether, on the balance of probabilities, the council holds any further information in scope of [2] or [3]. Furthermore, she will consider any procedural breaches in the handling of the request.
13. There is a small amount of information which the council redacted from its final submission to the complainant, of 17 January 2020 (an email shown on page 16 of the submission). The council states that this information is out of scope of the request. Having reviewed the information, the Commissioner agrees that it is out of scope, being in relation to a separate planning permission.

Reasons for decision

Regulation 12(4)(e) – internal communications

14. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.
15. This is a class-based exception covering a relatively broad range of communications, including email correspondence, and there is no need for the public authority to consider the sensitivity of the information in order for the exception to be engaged. However, it is a qualified exception and, if it is engaged, the public authority is required to carry out a public interest test regarding whether or not the exception should be maintained.
16. The withheld information comprises of information in scope of [2]. The council explains that it is email correspondence which *"relates to the development of a guidance note which was never published."* It states *"we have however released this note to [the complainant] in its final version. We believe this note resolves [the complainant's] concern in [their] internal review request that "we are aware of other electronic communications between Officers in relation to this application that has not been disclosed."*

17. The council provided the Commissioner with the withheld information, being:
 - a draft version of the guidance note with annotated comments; and
 - the internal email correspondence which was created in response to the complainant's letter of objection to the discharge of the lighting condition and subsequent planning approval. The internal email correspondence also related to the generation of the guidance note.
18. The council's correspondence on the matter includes the draft guidance note, with annotated comments. The concept of communication is broad for regulation 12(4)(e), and includes documents such as these, which are circulated within the public authority.
19. In this case, the Commissioner is satisfied that the withheld information comprises email correspondence and the draft version of the guidance note with annotated comments; which were exchanged between various council officers including one providing legal advice.
20. The withheld information falls within the definition of internal communications and so the exception is engaged. The Commissioner will therefore continue and consider the balance of the public interest in the disclosure of the emails and attachment.

Public interest in favour of disclosing the information

21. The complainant advised that the planning permission, with which the lighting condition is associated, was granted in 2018 for a warehouse which is in close proximity to a large number of residential properties.
22. The complainant asserts that there is a significant amount of public interest in mistakes relating to the decision to approve the building of the warehouse. It is their position that the granting of the permission was controversial and a number of planning conditions, which protected a residential amenity, were omitted.
23. The complainant states that disclosures through other FOIA/EIR requests have raised questions regarding how the council handled the planning application.
24. The complainant has provided links to BBC news articles. The articles report that the council had stated that the letter confirming the planning permission to the applicant, omitted the screening and noise conditions it had wanted to impose. The Commissioner notes that, within the same

articles, it is also reported that the council said it was seeking to apply the conditions retrospectively.

25. The complainant contends that the lighting scheme was approved despite assurances from the council that it would consult with local residents, and that the council have admitted that they lacked expertise in approving such schemes. They advise that since it's approval there have been a large number of complaints from residents that the lighting is too bright and has a detrimental impact on the enjoyment of their properties.
26. The complainant asserts that the disclosure of internal communications are the only means by which the public are able to understand how the decision was made to approve the lighting scheme. This is because the council have advised that there was no requirement to consult with the public, or produce a report on the lighting scheme approval.
27. The complainant argues that the issue is no longer live, as the planning application has already been decided and cannot be challenged. Therefore, no weight should be afforded to 'safe space' arguments due to the passage of time.

Public interest in favour of maintaining the exception

28. The council advised that a judicial review of the decision to grant the planning application for the warehouse was ongoing at the time of the request.
29. The council also advised it has commissioned an external review, also ongoing, into the way the council handled the planning application. As such, the council contends, the issues surrounding the granting of the application are still live. It is unknown what the findings of the review may be and therefore whether litigation action could be taken against the council in the future. The council states that the withheld information might be used as evidence in any such litigation.
30. The council argues that the withheld information is dated after the planning application was provided, and, therefore, it does not relate to the making of the planning application decision. Rather, it is internal deliberations after the permission was granted, to increase the council's own understanding of events. It was never intended for public viewing.
31. The council contend that this safe space is required to allow their senior management the opportunity to discuss the associated financial and legal matters with their advisors.

32. The council advised that the complainant has initiated a number of legal proceedings previously. It stated that, in consideration of the ongoing external review and the risk of future litigation, it did not consider it appropriate that the matter be further examined under the EIR.
33. The council states that disclosure of the information would also be likely to inhibit future discussions regarding similar planning applications which could impede planning processes. The council's view is that this would lead to an ineffective use of public resources and money.
34. The council concludes that, by releasing a final version of the guidance note to the complainant, the public interest in understanding how the council made decisions on this planning application, have been satisfied to some extent. It states, therefore, that the arguments for disclosure are weakened.

The balance of the public interest

35. As stated above, regulation 12(4)(e) is a qualified exception. As such, it is subject to the public interest test at regulation 12(1)(b), which states that information can only be withheld if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.
36. There is always a public interest in a public authority being transparent regarding how it conducts its business. In addition, regulation 12(2) of the EIR states that "*a public authority shall apply a presumption in favour of disclosure*". These factors already lend weight in favour of environmental information being disclosed by the council.
37. EIR 12(4)(e) - internal communications, may include legal advice from in-house lawyers, which will attract legal professional privilege. However, public interest arguments under this exception must be focussed on harm to internal deliberation and decision-making processes. If a public authority does use this exception, there will be some public interest in preserving a safe space to seek and consider legal advice without external interference.
38. The Commissioner appreciates that there is strong local public interest in the matters associated with the approval of the planning application for the warehouse. Specifically, in reference to the withheld information, due to the contentious nature of the planning approval and the associated planning conditions. The Commissioner therefore recognises the significance of the arguments presented by the complainant for disclosure of the information.

39. However, there are factors which the Commissioner considers give greater weight in favour of withholding the internal communications. Specifically, the judicial review which was not concluded at the time of the request, and the external review which was ongoing at the time of this decision.
40. The Commissioner is persuaded that council officers required the safe space in order to deliberate the controversial issues surrounding the granting of the planning application, which includes specific discussions about the lighting condition. Furthermore, in consideration of the point that the external review may lead to future litigation, it would not be appropriate for the EIR to rule on any related disclosures at this stage.
41. In this case, the Commissioner also recognises the real danger of a “chilling effect” being caused by the disclosure of the internal communications. This would have the potential to negatively affect future reflections into planning decisions it has made, and the decision making processes, where its officers and advisers might provide less full and frank advice.
42. In this case, the Commissioner’s view is that the balance of the public interests favours maintaining the exception, rather than being equally balanced. This means that the Commissioner’s decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(e) was applied correctly.

Regulation 13 personal data

43. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) of the Data Protection Act 2018 is satisfied.
44. In this case the relevant condition is contained in regulation 13(2A)(a)¹ of the Data Protection Act 2018. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (‘the DP principles’), as set out in Article 5 of the General Data Protection Regulation (‘GDPR’).
45. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

Act 2018 ('DPA'). If it is not personal data then regulation 13 of the EIR cannot apply.

46. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

47. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

48. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
49. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
50. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
51. In relation to request item [2], the council have redacted contact information which relates to the applicant, the applicant's agent and some council or parish council officers. Specifically, this includes names, roles, business names, email addresses and phone numbers. In the circumstances of this case, the Commissioner is satisfied that that this information both relates to and identifies the data subjects concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
52. In relation to request item [5], the council advised that the positions of "Case Officer / Team Leader" referred to in the request were held by council officers in the respective roles of "Deputy Development Management Manager" and "Development Management Manager." The council advised that the identities of both role holders are in the public domain. The request is for information regarding the qualifications and experience of the officers in those roles.
53. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information requested in [5] relates to the council officers in the roles of Deputy Development Manager and Development Management Manager. She is

satisfied that this information, being their qualifications, both relates to and identifies the council officers concerned, as the council officer's names are in the public domain. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

54. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
55. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

56. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

57. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
58. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

59. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.
60. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"².

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

61. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

62. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

63. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

64. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

65. In relation to [2], no legitimate interest has been identified in relation to the release of the redacted contact information. The Commissioner has therefore decided that the council was entitled to withhold the redacted

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

information in scope of [2] under regulation 13(1), by way of regulation 13(2A)(a).

66. In relation to [5] the complainant states that "*...there is a legitimate public interest for this information to be released because planning powers have been delegated to Officers. In order for the public to have confidence and faith in the planning system, it is important that they should know whether the decision-makers are adequately qualified to make decisions.*"

67. The Commissioner is satisfied that a legitimate interest is being pursued.

Is disclosure necessary?

68. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.

69. The council states that it has disclosed the role profiles for the council officers concerned, "*so that it is possible to see what the requirements of the role are and to provide assurance to the public of the qualifications and experience required for the role.*"

70. The Commissioner agrees that the information disclosed by the council provides the public with insight into the requirements of officers in the two roles. However, she considers that the legitimate interest expressed by the complainant is for unequivocal evidence of the qualifications and experience of the two officers in relation to assessing lighting plan schemes.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

71. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

72. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause;

- whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
73. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
74. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
75. The complainant advised the Commissioner that some information in scope of [5] had been in the public domain *"as the Council already publishes a biographical page for each planning officer"* and provided a link by way of example *"to the Council's Case Officer's biography on their website."* However, the link currently results in a *"page not found."* message. Furthermore the council have stated that that the publication of biographical information about planning officers *"is not considered to justify the publication of information relating to other officers and specifically the qualifications and experience relating to the Case Officer who assessed the lighting plan schemes."*
76. The council advises that the officers concerned were not the decision makers on the planning application and that they are below the level of head of service and as such *"are afforded and can reasonably expect a certain level of privacy."* The council also states that the individuals would not consent to the disclosure of the information.
77. The Commissioner has not found any evidence of the requested information or related information currently being available on the council's website. The Commissioner is cognisant that disclosure under the EIR involves disclosure to the world at large; and that the information free from any duty of confidence. Consequently, releasing the information in scope of [5] would provide the general public with unrestricted access to the employees' personal data regarding their work qualifications and experience. It is then possible for the information to be used for any purpose beyond the issue of concern to the local community which is at the core of this request.
78. The Commissioner considers that a disclosure of this nature could constitute a disproportionate and unwarranted level of interference with an employee's rights and freedoms.

79. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information in scope of [5] would not be lawful.

The Commissioner's view

80. The Commissioner has therefore decided that the council was entitled to withhold the contact information redacted in scope of request item [2] and all of the information in scope of request item [5] under regulation 13(1), by way of regulation 13(2A)(a).

Regulation 5(1) – duty to make environmental information available on request

81. 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.
82. 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 argument. 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. She will also consider any reason why it is inherently likely or unlikely that information is not held.
83. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner applies in this case.
84. In discussing the application of the balance of probabilities test, the Tribunal stated that, "*We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had*

not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed." The Commissioner has therefore taken the above factors into account in determining whether, on the balance of probabilities, further information is held.

The Complainants view

85. In relation to [2], which is for copies of correspondence between officers in the council relating to the lighting scheme, the complainant states that:

- They, along with other residents, were in correspondence with the Deputy Chief Executive at the time that the request was made, however, this information is missing. Also, that they, and other residents, spoke to the Deputy Chief Executive on a number of occasions, and understood that he had contacted the planning team and requested explanations and a chronology of events.
- A disclosed email makes reference to a note being "shaped" for the Chief Executive and Deputy Chief Executive. As such electronic communication with those individuals will exist.

86. In relation to [3], which is for a record of the time/date and notes of telephone calls between the applicant, their agents and council officers, the complainant states:

- *"We dispute that the Council does not hold telephone records between parties. It is likely that the Council is the data controller of such information and it is easily accessible from the Council's telephone service provider."*

The Council's response

87. In relation to item [2] the council states:

- *"... 2 notes were drafted for the Deputy Chief Executive, one with the intention of being shared with the public and one for internal notes / understanding only. The note which was intended to be shared with the public was in the end not shared as I understand that a telephone call with [the complainant] answered all of the questions. However, we did release the final version of this note in our further disclosure on 17/01/2020. Any correspondence regarding the second note, intended for internal purposes only, has been provided to the ICO with our original response... These correspondence were withheld under Regulation 12(4)(e)..."*

88. In relation to item [3] the council advises:

- *"We do not hold records for phone calls between parties and calls are not recorded.*
- *It is technically possible for the Council to obtain details of every telephone number (apart from number withheld) which has called the Council over a time period and likewise every call made from the Council to external numbers however it is not possible to match a number received or called and link that telephone number to the subject matter of this request unless a specific record was made by the officer. In this case there are no specific records of telephone calls between the applicant or the applicant's agent and the Council regarding the lighting scheme."*

89. There is a small amount of information which the council redacted from its final submission to the complainant, of 17 January 2020 (an email shown on page 16 of the submission). The council states that this information is out of scope of the request. Having reviewed this information, the Commissioner agrees that it is out of scope, being in relation to an entirely separate planning permission.

90. The Commissioner asked for details of the searches undertaken that were likely to retrieve information in scope of [2] or [3]. The council stated that officers involved in the planning application had searched their email mailboxes, electronic files (including shared folders) and paper files. Electronic data on corporate servers had been searched. It confirmed that their IT systems do not allow for data to be transferred out of the environment to a local host or any other storage. The council has advised the Commissioner of the search terms used, which included the lighting condition reference, applicant and agent's details, and key words associated with the application.

91. The Commissioner asked whether information in scope of the request had been deleted. The council advised that it was possible that some correspondence between officers and the applicant's agent could have been deleted in order to free-up mailbox space. However, it advised this would only happen if the email had been superseded or the officer felt there was no need to retain it. The council advised that it was confident that no information had been deleted intentionally nor following receipt of the request.

92. The council advised that *"we are confident that the only records which could have potentially been deleted prior to the request and in relation to this request were correspondences. This would typically be emails. MKC's [the council's] corporate retention policy for emails is at the officer's discretion based on their content."*

93. Regarding statutory requirements, the council stated that there is no such requirement for retaining the date, time or content of a call in relation to a planning application. It also stated that anything required by law for a planning application is published.

Conclusion

94. In coming to her conclusion, the Commissioner has considered the points raised by the complainant, and their view regarding why further information should be held by the council. The Commissioner has also considered the responses provided by the council during the course of her investigation.
95. In relation to [2], the complainant identified further information they believed should exist, on the grounds of discussions that were held with the Deputy Chief Executive, and that had been referenced in other disclosed material. Relating this back to the information identified by the council, this is both the internal and public "notes", and the email correspondence associated with their drafting which was withheld under Regulation 12(4)(e).
96. In relation to [3], the Commissioner accepts that the council provides a reasonable explanation regarding why call logs could not be linked to subject matter, and that information would be held only if "*a specific record was made by the officer.*"
97. The Commissioner is satisfied that the council have undertaken appropriate searches to identify all information held in scope of the request items [2] and [3]. The council confirmed that whilst some information, such as duplicate or out of date emails, may have been deleted prior to the information request, no information has been subsequently destroyed or deleted. The Commissioner accepts the council's provision that it has no statutory requirement to hold any further information in relation to a planning application, including the logging of telephone calls and their content.
98. The Commissioner appreciates that the complainant has misgivings about the totality of the information provided by the council; and this has been exacerbated by its changing position and late release of some information, following the commencement of the Commissioner's investigation.
99. However, the Commissioner has not found there to be any evidence which undermines the council's position that it has now located all of the information it holds relevant to this request.

100. Taking all of the above into account the Commissioner is satisfied that, on the balance of probabilities, no further information in-scope of the request is held by the council.

Procedural matters

Regulation 5(2)

101. Regulation 5(2) of the EIR provides that in response to information requests under the EIR, information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.

102. The complainant made their request for information on 11 May 2019. The council provided further information in its final response of 17 January 2020. This is much later than the statutory 20 working days, being 8 months after the original request.

103. The Commissioner therefore concludes that the council failed to comply with the requirements of Regulation 5(2), in that it did not disclose the information within 20 working days of receiving the request for information. As the response has been provided no further action is required.

Right of appeal

104. 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@justice.gov.uk

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

105. 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.

106. 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
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