

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

Decision notice

Date: 17 November 2021

Public Authority: Maker with Rame Parish Council
Address: Fore Street
Kingsand
Torpoint
Cornwall PL10 1NB

Decision (including any steps ordered)

1. The complainant requested information from Maker with Rame Parish Council, Cornwall ("the Council") about decision-making in relation to a planning application, and in relation to its dealings with him as an individual.
2. The Commissioner's decision is that some parts of the request fell to be considered under the EIR, and some parts under the FOIA.
3. The Council failed to respond to any part of the request within 20 working days, and was therefore in breach of regulation 5(2) of the EIR and section 10 of the FOIA. As a response has now been issued, the Commissioner does not require any steps to be taken.

Request and response

4. On 9 March 2021, the complainant wrote to the Council and requested information in the following terms:

""Can I get sight of ALL correspondence in relation to the MwRPC decision making process - digital or otherwise - in relation to the separate, numbered 7 points raised below. This included - but is not limited to - all correspondence before a possible (sub-) committee meeting, agenda(s?) shared, all emails/deliberations of the (sub-) committee - and minutes, notes, interests declared, etc. All correspondence with any possible 3rd parties in relation to the separate, numbered 7 points raised below. All with a clear time stamp, clear sequence/string of discussions etc. ""

1 - Apparently some members of the MwRPC had a meeting with a Mr [name redacted] in 2016 to discuss - and advised against - a potential planning application for a piece of land at Rame. How was this decided?

2 - Apparently a Mrs [name redacted] offered this piece of land at Rame to the MwRPC in 2018/19, which was subsequently turned down by the MwRPC. How was this decided?

3 - at the 17 August 2020 Cornwall Council planning meeting the vice-chair read out a statement on behalf of the MWRPC supporting the application under discussion. How was the content arrived at?

4 - On 17 September 2020 I received an email stating: 'Your 26 questions will not be answered' etc. How was this decided?

5 - a 'register of delegated decisions' was uploaded on the MwRPC in November 2020. How was this arrived at?

6 - On 17 December 2020 I received an email stating: ' The Council deemed you a persistent complainer', etc. How was this decided?

7 - The MwRPC have ignored various of my FOI requests and an ICO request. How was this decided?"

5. The Council did not respond to the requests until 27 October 2021, following the involvement of the Commissioner.

Scope of the case and background

6. The complainant contacted the Commissioner on 26 August 2021 to complain about the way his request for information had been handled. At this stage, he had not received a response.

7. Concurrently with this investigation, the Commissioner investigated the Council's handling of other requests made by the complainant between September-October 2020, and in December 2020.
8. On 6 September 2021, the Commissioner wrote to the Council. She explained that she required further action from the Council, including responding to the request under consideration in this notice.
9. She also required the Council to respond to the requests made between September-October 2020 and December 2020. The Commissioner is issuing decisions regarding the handling of those requests under the reference numbers IC-65675-B5D3 and IC-86576-Z6F4 respectively.
10. As previously referred to, the Council issued a response to the complainant on 27 October 2021. In its response, the Council provided some general explanations to the complainant. However, no recorded information was located, falling within the scope of the request of 9 March 2021.
11. Since the complainant made his requests, the Commissioner is aware that there has been an almost complete change of personnel at the Council.
12. She is aware that, since August 2021, the current Chair and Acting Clerk have carried out extensive searches to see whether any recorded information is held falling within the scope of the complainant's requests.
13. However, it has not been possible to determine conclusively whether, if the council officials who were in post at the time of the request had carried out effective searches at that time, recorded information falling within the scope of the request of 9 March 2021 may have been located.
14. This is highly regrettable, which is acknowledged by the Commissioner, the complainant, and the current Council. However, the complainant accepts that no recorded information, falling within the scope of the request under consideration in this notice, is now held, and has asked the Commissioner to focus on the Council's failure to respond at the correct time.
15. This notice covers whether the Council responded to the request within the statutory time-frame.

Reasons for decision

Regulation 5 EIR – making environmental information available **Section 1 FOIA – access to information**

16. Regulation 5(1) of the EIR states that, unless the request is for the requester's own personal data, *"a public authority that holds environmental information shall make it available on request."*
17. 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."*
18. Section 1(1)(a) of the FOIA states that *"any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request."*
19. Section 10 of the FOIA (time for compliance with the request) states that: *"a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*
20. As previously explained, the Commissioner considers that some parts of the request (specifically, parts 1-3) fell to be considered under the EIR. This is because the requested information was information on *"measures and activities affecting, or likely to affect, the elements and factors of the environment"*, and therefore for information which would fall within the definition of environmental information at regulation 2(1)(c) of the EIR.
21. She considers that the remainder of the request fell to be considered under the FOIA.
22. Whilst the Council has now provided the complainant with a response, confirming it does not hold the requested information, it did so over seven months after the request was made.
23. This is outside of the statutory 20 working days; therefore the Council breached regulation 5(2) of the EIR in respect of parts 1-3 of the request, and breached section 10 of the FOIA in respect of the remainder.
24. No further action is required, as a response has now been provided.

Other matters

25. The Commissioner considers that the initial handling of this request, and of the complainant's other requests as considered on decision notices reference IC-65675-B5D3 and IC-86576-Z6F4 respectively, by the previous officers of the Council, was wholly inadequate. This is highly regrettable.
26. She is also aware that the previous officers may have failed to retain relevant information, which has been investigated separately.
27. The Council must ensure that it considers future information requests in a timely manner, including determining whether they fall to be considered under the DPA (in case where a requester is asking for their own personal data), the FOIA and/or the EIR, and to respond accordingly, as required by the legislation.

Right of appeal

28. 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

29. 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.
30. 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

Ben Tomes
Group Manager
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Wycliffe House
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