

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

### **Decision notice**

**Date:** 7 February 2022

**Public Authority:** Rugby Borough Council  
**Address:** Town Hall  
Evereux Way  
Rugby  
CV21 2LA

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

---

1. The complainant requested from Rugby Borough Council (“the Council”) information relating to emails sent and received by a specific officer, between two dates, about a specified topic. The Council denied that the information was held.
2. The Commissioner’s decision is that the Council does not hold the information.
3. The Commissioner does not require the Council to take any steps.

#### **Request and response**

---

4. On 4 August 2020, the complainant wrote to the Council and requested information in the following terms:

*“Please take this email as a Freedom of Information Request to provide all of the emails exchanged between [redacted officer name] and*

*Rugby Borough Council works services, for the period between 21st May 2017 and 13th July 2017.*

*Below by way of reference as to existence of such emails is excerpt from an email sent to me by [redacted officer name].*

*[redacted officer name] ([redacted officer name]@rugby.gov.uk) "Dear Mr [redacted complainant's name] Thu, 13 Jul 2017 11:41 I have had a reply to your initial enquiry from works services, Technically, to quote; the second culvert which RBC originally built is slightly smaller than the highways one."*

5. The Council responded on 27 August 2020. It stated that no information was held.
6. Following an internal review, the Council wrote to the complainant on 23 October 2020. It maintained its original response.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 20 November 2020 to complain about the way their request for information had been handled, and specifically that the Council is likely to hold the requested information.
8. The scope of this case and of the following analysis is whether the Council holds the requested information.

### **Reasons for decision**

---

#### **Regulation 5(1) – Duty to make available environmental information on request**

9. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
10. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a

public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

#### The complainant's position

12. The complainant has explained to the Commissioner that they have requested the information – being emails between a specific council officer (acting as the Council's legal advisor) and the Council's works services - in relation to flooding that has impacted upon their home.
13. The complainant has indicated that this flooding has been the subject of litigation against the Council. The complainant considers that the information they have requested should have been disclosed by the Council as part of that litigation.
14. The complainant considers that the Council is likely to hold the requested information – either in the specific officer's email personal drive or backed up on the Council's servers.

#### The Council's position

15. The Commissioner has asked the Council to confirm the steps it has undertaken to identify any information that would fall within the parameters of the request.
16. The Council has informed the Commissioner that it has undertaken the following steps:
  - Legal Services have reviewed their electronic records held on the network drive – both manually and through keyword searches including the terms "*Culvert*", "*Severn Trent*", and the names of both the specific officer and the complainant. No information was identified.
  - Legal Services have manually reviewed the paper files relating to the complainant's litigation. No information was identified.
  - IT Services have been consulted, who have confirmed that the specific officer's email account was fully deleted following their leaving the Council's employment in 2017, and no back up is retained.
  - The relevant officer within the Works Services Unit has been consulted, who has confirmed that they no longer hold any relevant emails from the period.
17. The Council has explained to the Commissioner that it expects officers to delete email communications once they are no longer needed. Where

there is a need to retain a formal record of such emails, officers are expected to save them to the relevant case management system. In respect of inter-department communications, the Council does not have a business need to routinely retain these, and where an officer leaves the Council, their email account is fully deleted unless a senior officer makes a formal request otherwise (which did not occur in this case).

The Commissioner's conclusion

18. The Commissioner has considered the Council's position, in conjunction with the request.
19. The Council has provided the Commissioner with a cogent explanation of the specific searches it has undertaken to identify any relevant held information that would fall within the parameters of the request. These searches appear to be both appropriate and thorough in relation to the nature of information sought by the request, and there is no evidence available to the Commissioner that suggests these searches were deficient.
20. The Commissioner is mindful that a public authority will only retain information where it perceives there to be a business need to do so. In this case, the request relates to email correspondence that would have been over three years old at the time of the request; if the Council did not consider there to be a business need to retain the information, then it is reasonable for the Commissioner to accept that it would not have done so.
21. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

## Right of appeal

---

22. 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)

23. 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.
24. 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 .....**

**Daniel Perry**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**