

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 31 October 2023

Public Authority: Wakefield Council
Address: County Hall
Wakefield
West Yorkshire WF1 2QW

Decision (including any steps ordered)

1. The complainant requested information relating to a specific planning application. Wakefield Council (the "council") disclosed some information and confirmed that further information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the council has provided all the information it holds in relation to the request and that regulation 12(4)(a) applies but that it failed to do this in time and breached regulation 5(2) of the EIR.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 12 April 2023 the complainant requested the following information from Wakefield Council (the "council"):

"All emails and documents relating to planning application 22/02202/FUL and appeal 23/00010/NONDET."
5. The council responded on 12 May 2023 and directed the complainant to information on its website. The council explained that other information was held but that it did not have a material bearing on the substantive matter and that it consisted of duplicates of information already accessible on its website. It also explained that it would take some considerable time to locate, retrieve and extract this additional information. To illustrate this the council provided some samples of this information and confirmed that, if the complainant wanted this additional information, they could refine the scope of their interest to make the request more manageable. The council also confirmed that it was withholding some third party personal information under regulation 13 of the EIR.
6. On 4 June 2023 the complainant wrote to the council, expressing dissatisfaction with its handling of the request. They also confirmed that they were willing to limit the scope of their request to correspondence between specific named parties.
7. On 15 June 2023 the council wrote to the complainant and confirmed that it would be providing the specified information. The council explained that, due to the volume of information involved, there would be a delay to the provision of all the relevant correspondence. In light of this, the council asked the complainant to confirm whether their preference was to receive the information in its entirety at the end of the process or in a piecemeal manner.
8. On 15 June 2023 the complainant confirmed they were willing to receive the information in piecemeal fashion.
9. Following subsequent correspondence between the parties, the complainant wrote to the council on 7 July 2023 and asked it to carry out an internal review.
10. On 2 August 2023 the council sent the outcome of its internal review to the complainant. This acknowledged the delays involved in the provision of information and apologised to the complainant. The review also provided the complainant with the outstanding information.

Scope of the case

11. On 4 September 2023 the complainant contacted the Commissioner to complain about the council's handling of their request.
12. The Commissioner confirmed that his investigation would consider whether the council handled the request in accordance with the statutory time limits and whether all the relevant information that it holds has been disclosed. The Commissioner confirmed with the complainant that this decision notice would not consider the council's redaction of personal information from the disclosed documents.

Reasons for decision

Regulation 5 – duty to provide environmental information

13. Regulation 5(1) of the EIR states:

“Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.”
14. Regulation 5(2) states:

“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.”
15. In this case the complainant submitted their request on 12 April 2023 but the council failed to disclose all the requested information until the time of the internal review in August 2023.
16. The Commissioner has, therefore, found that the council breached regulation 5(2) of the EIR.

Regulation 12(4)(a) – information not held

17. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information “to the extent that it does not hold that information when an applicant's request is received”.
18. Where there is some dispute between the amount of information identified 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 decisions must decide whether, on the

civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.

19. The complainant has stated that their refined request specifically asked for emails between the Planning Case Officer and Head of Planning but that the council has not provided this information. The council's position is that it has disclosed all the relevant information that it holds.
20. In order to determine where the balance of probabilities falls in this case the Commissioner approached the council and asked it for details of the steps it had taken to establish whether information was held.
21. The council confirmed that its Planning Department searched their files using the various planning application numbers and addresses, and advised that no e-mails had been exchanged between the Case Officer and Head of Planning. The council explained that this is the reason why none were included in its initial disclosure to the complainant.
22. The council explained that, during the Commissioner's investigation, the Planning Case Officer carried out a further search and located two instances where they did send emails to the Head of Planning. The council confirmed that the first occasion involved them forwarding a copy of an email (which was provided to the complainant as part of the response to the internal review) that had been sent to local Councillors advising them of a forthcoming meeting. The council stated that the second email (which did not have the planning reference number or address in the subject title, hence why it was not located in the original search) provided the Head of Planning with a copy of a draft response to a member of the public that the Case Officer was sending out. The council confirmed that this response had also been disclosed to the complainant following the internal review.
23. Having considered the council's explanation of the searches it carried out, the Commissioner is satisfied in this case that, on the balance of probabilities, the council has provided all the relevant information within the scope of the request to the complainant and that no further information is held. He is, therefore, satisfied that regulation 12(4)(a) of the EIR applies.
24. Technically, regulation 12(4)(a) contains a public interest test. However the Commissioner cannot conceive of a public interest argument that would require a public authority to disclose information that it does not hold.

Other matters

25. Although they do not form part of this notice the Commissioner would like to note the following matters of concern.
26. During the course of his investigation the Commissioner raised with the council his concerns about the delays in the provision of information. The council has acknowledged its failings in this matter and provided assurances that this was an exceptional case and not indicative of its broader practice.
27. The Commissioner recognises that, in mitigation, the council was open with the complainant about the delays being faced and he has no evidence that there was any intent to deliberately delay access to information. However, he expects that in its future handling of requests, the council will provide responses within the statutory timescales.

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: 0300 1234504
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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF