

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

**Decision notice**

**Date:** 20 December 2011

**Public Authority:** Leeds City Council  
**Address:** 110 Merrion House  
Merrion Centre  
Leeds  
West Yorkshire  
LS2 8DT

**Decision (including any steps ordered)**

---

1. The complainant, on 11 March 2011, requested all emails by or to a named council officer that related to the (then) current proposed Leeds Library Services changes and cuts.
2. The Commissioner's decision is that, on the balance of probabilities, Leeds City Council ("the council") has conveyed to the complainant all the requested information that it holds.

**Request and response**

---

3. The complainant, on 11 March 2011, requested all emails by or to a named council officer that related to the (then) current proposed Leeds Library Services changes and cuts.
4. The council responded on 20 April 2011. It informed the complainant that the request had been considered under the Environmental Information Regulations 2004 (EIR) as the information requested can reasonably be said to be about 'measures' which are likely to affect one of the specified elements of the environment. The council advised that regulation 2(1)(f) states that the regulations are applicable to 'built structures' (in this case, libraries) in as much as they are affected by any matters referred to in regulation 2(1)(c) including administrative measures, policies and plans.

5. The council (under cover of the above response) went on to provide some emails relating to changes to Library Services but withheld the remainder and relied on regulation 12(4)(d) (material still in the course of completion) in doing so.
6. Following an internal review the council wrote to the complainant on 22 June 2011. It stated that the formative review into the provision of library services had now ended with the putting of formal proposals to its Executive Board. The Council therefore would cease its reliance on 12(4)(d) and release the withheld information to the complainant.

### **Scope of the case**

---

7. The complainant, on 27 June 2011, contacted the Commissioner to complain about the council's handling of his request for information. He said that an article in a local newspaper (Wetherby News, 3 March 2011) strongly indicated that the council had not disclosed all the requested information. The article in the newspaper quoted an email that apparently constituted requested information by the complainant but not released to him. He also believed that the council held other emails that constituted requested information yet the council had not released them to him.
8. The Commissioner therefore considered whether the council has conveyed to the complainant all the requested information that it holds.

### **Reasons for decision**

---

#### **Substantive Procedural Matters**

#### **Was the request for environmental information?**

9. The council handled the request under the EIR. However, the Commissioner's view is that the request – which related to the (then) current proposed Leeds Library Services changes and cuts - was not a request for environmental information. On the facts of this matter, there is insufficient linkage between the considerations regarding the future provision of library services by the council and the environment (as set out in regulation 2(1) of the EIR) for the requested information to be environmental information.
10. Notwithstanding that the council ought to have considered the request by reference to FOIA rather than EIR the Commissioner, in any event,

utilises the same considerations for both regimes to determine if the council holds further non-released requested information.

**On the balance of probabilities, does the council hold any more information?**

11. The standard of proof to apply in determining whether a public authority does hold [any further] requested information is that of the civil standard of 'on the balance of probabilities'.
12. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the council as well as considering, where appropriate, any other reasons offered by the council to explain why the information is not held. The Commissioner will also consider any evidence that further information is held, including whether it is inherently unlikely that the information so far located represents the total information held.
13. The Commissioner, to determine whether the council had released all the requested information, asked (in correspondence dated 18 October 2011) the following questions of the council. The Council's replies (in correspondence dated 9 November 2011) are given in italics:

- a. What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?

*As the request asked for all emails by or to a particular council officer in relation to the 'current proposed Leeds Library Services changes and cuts' the email account of the named officer was searched. The officer also keeps a paper file on the subject which was also checked for any relevant emails no longer retained on the emails system. (Note: Only business critical emails are added to the paper file)*

- b. If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

*The officer has both a desktop pc and a laptop. Both are networked; neither have anything stored on the hard drives. The network and the hard drives were searched.*

- c. If searches included electronic data, which search terms were used?

*The search terms used were*

*Leeds Library Service*

*New Chapter (the name of the project)*

*Library changes, reductions, closures, extended hours*

*Library consultation*

- d. If the information were held would it be held as manual or electronic records?

*The information would be held electronically and occasionally a paper file copy kept. The search of the paper file found nothing that was not already on the electronic system.*

- e. Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

*No*

- f. What does the public authority's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the public authority describe the way in which it has handled comparable records of a similar age?

*The council has implemented a limit on email storage capacity for officers. The policy on good email management is to delete at regular intervals. An electronic prompt is sent when an officer's mailbox is full. Because of the nature of the work of the officer in that she receives many large files via email her policy is to use the prompts to clear the deleted, sent and inboxes of no longer relevant large size emails and discussion threads that have run their course. The subject in question was a live issue at the time of the request, therefore no business relevant emails would have been destroyed.*

- g. If the information is electronic data, which has been deleted, might copies have been made and held in other locations?

*As stated previously no relevant electronic data had been deleted but in order to ensure nothing of relevance to the request could have been missed the paper file on the subject was searched for copies of emails. There was nothing in the file that had not been retrieved via the email search.*

- h. Is there a business purpose for which the requested information should be held? If so, what is this purpose?

*Some emails relating directly to the decision making process would be kept until the final report was approved at the Executive Board. This would be in order to provide an audit trail as to how the report's recommendation was arrived at. After implementation of the decision, the usual practice is that the background papers and / or relevant emails would be retained in case of any potential challenge and would then be destroyed*

*General discussion emails between officers would not be retained as there is no business purpose for doing so.*

- i. Are there any statutory requirements upon the public authority to retain the requested information?

*No*

14. In addition to the above, the Commissioner asked the council to explain how and why the email discussed in the newspaper article (paragraph 7 above) was not released to the complainant. The council's reply was that it believed the email did not fall within the information requested but, in any event, it was prepared to release it to the complainant. This it did on or about 23 November 2011.
15. The Commissioner notes that the request for information was specific, in that it sought all emails by or to a named council officer generated by one activity: the review of library services. This would allow the council to focus on the relevant email account rather than having to conduct a sprawling general search of multiple email accounts. Indeed the council stipulates that the officer has a networked desktop pc and a laptop that has been subject to appropriate searches of the network and hard drives. These factors lend the Commissioner to believe that an appropriate and sufficiently accurate search was undertaken by the council for the requested information.
16. Based on the above, the Commissioner was satisfied that, on the balance of probabilities, the council does not hold further information falling within the scope of the request.

## Right of appeal

---

17. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

18. 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.
19. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**