

Freedom of Information Act 2000 (Section 50)
Environmental Information Regulations 2004

Decision Notice

Date: 31 May 2011

Public Authority: Chelmsford Borough Council
Address: Civic Centre
Duke Street
Chelmsford, Essex
CM1 1JE

Summary

The complainant submitted a request to Chelmsford Borough Council ('the Council') for information about a planning application. The Council disclosed some information, and stated that it did not hold any further relevant additional information. The Commissioner has investigated and found that the Council has disclosed all of the information that it holds within the scope of the complainant's requests. However the Commissioner finds a breach of regulation 5(2) as the Council did not make all of this information available within the statutory time for compliance. It has also breached regulation 14(3)(a) by failing to cite the specific exception that it relied upon in withholding information. The Commissioner does not require the Council to take any further action.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. Planning application 08/00347/OUT was submitted on 27 February 2008. The application was for a mixed use development of residential and commercial accommodation at the rear of Chelmsford High Street. Details of the application can be viewed [on the Council's website](#). The application was amended in June 2009. As yet the application has not been withdrawn, but the Council has advised the Commissioner that it is unlikely that the application will proceed.

The Request

3. On 1 March 2010, the complainant emailed the Council to request the following information:
 - 1) "A copy of the scoping opinion given in respect of this Application [08/00347/OUT] for the purpose of the Environmental Impact Regulations
 - 2) Minutes of meetings with the Applicants or their representatives since the Application was presented
 - 3) Public and on line information. Confirmation please that each should contain similar information to the other particularly for those who do not own or use a computer
 - 4) Draft of section 106 agreements and associated correspondence"

The Council acknowledged the request on 2 March 2010. On 8 March 2010 the complainant emailed the Council again to make the following additional requests:

- 5) "If a date has been fixed for the PC meeting which will discuss this application?"
 - 6) A copy of the Ecological Assessment Report Ref No. A37.03 submitted with Stage 1 Bond Street"
4. The Council emailed the complainant on 19 March 2010 and responded to his requests as follows:

- 1) *The scoping opinion*
A copy of the "screening opinion" was attached.
 - 2) *Minutes of meetings*
The Council asked the complainant to clarify "what specific matters from meetings with the developer team you want to know".
 - 3) *Public and online information*
This request was not addressed.
 - 4) *Section 106 agreement*
The Council confirmed that there was no draft s.106 agreement "as yet" but provided an outline of the likely scope of an agreement.
 - 5) *Date of the PC meeting*
The Council stated that it intended to take a report to the planning committee on 6 April.
 - 6) *Ecological Assessment Report*
The Council explained that it had put the report on a CD and would either post or hand this to the complainant as the file was too large to be transmitted via email.
5. On 22 March 2010 the complainant emailed the Council to ask that the CD was left at the planning reception for him to collect. On 15 April 2010, he emailed the Council to chase up a response to his second and third requests, for minutes of meetings and "public and online information" respectively.
6. Following the intervention of the Commissioner, the Council emailed the complainant on 12 July 2010 to state that regarding his second request, it was "compiling a record of all the meetings that took place, what was discussed and the nature of notes or follow-up correspondence". In relation to the complainant's third request, the Council provided an explanation of the information that was available publicly in the planning office, and online. The Council stated that submitted forms, drawings, statements, and representations of the application were all made available online. The Council informed the complainant that the hard copy information that could be made available on request would be the same, and enquired if it had interpreted the request correctly.
7. On 2 August 2010 the Council emailed the minutes of meetings to the complainant, in response to his second request. The complainant

emailed the Council on 4 August 2010 to state that he was dissatisfied with this response.

The Investigation

Scope of the case

8. On 7 May 2010 the complainant contacted the Commissioner to complain about the Council's failure to respond to his request for information. After receiving the Council's further response, the complainant emailed the Commissioner on 21 July 2010 to make a further complainant about the way his request for information had been handled.
9. The complainant's original complaint detailed that whilst he had requested the Council leave the CD containing the Ecological Assessment report for him to collection at reception, this had not been done. During the course of the investigation, it became clear that the CD had in fact been placed at reception, but this had not been confirmed to the complainant. The complainant has since collected this CD and so the Commissioner has excluded this part of the complaint from his investigation.
10. The Commissioner has scoped the complaint to three areas:
 - 1) Whether additional information is held in relation to the complainant's second request for minutes of meetings regarding the planning application.
 - 2) Whether any additional information is held in relation to the complainant's third request about information that is available online, and the information that is made available for public inspection.
 - 3) The Council's failure to disclose some information within the statutory time limits for compliance.

Chronology

11. On 4 March 2011, the Commissioner wrote to the Council with a series of questions about the way it had handled the request. The Council responded on 31 March 2011.

12. The Commissioner exchanged further correspondence with the Council regarding the way it had handled the request during April and May 2011.

Analysis

Substantive Procedural Matters

Regulation 2

13. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
14. The Commissioner considers that the information requested falls within regulation 2(1)(c): "measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements". The complainant has requested information about a planning application which if implemented would affect the elements of the environment as set out in regulation 2(1)(a). The Commissioner considers that the application is consequently a 'measure' as defined in regulation 2(1)(c). The complainant has requested information about this measure, and the Commissioner therefore concludes that the request is for environmental information.

Regulation 5

Regulation 5(1)

15. Regulation 5(1) provides that "...a public authority that holds environmental information shall make it available on request". The Commissioner has considered whether the Council has disclosed all of the information that it holds in relation to the complainant's second and third requests below.

Does the Council hold any additional information within the scope of the complainant's second request?

16. The complainant's second request was for "minutes of meetings with the Applicants or their representatives since the Application was presented". The Council has disclosed thirteen sets of minutes of meetings with the scheme's developer to the complainant. These meetings mainly took place during 2007 and 2008, with the exception

of one meeting which was held in February 2009. It also disclosed the minutes of the planning committee that considered the application in May 2010. The complainant was dissatisfied with this response and believed that further meetings would have been held during 2009 and 2010.

17. The Council has explained to the Commissioner that the original application was submitted on 27 February 2008. The meetings held prior to this, during 2007, were 'pre-application meetings', and it is apparently common practice amongst most local authorities for these to be held in order to improve the quality of submissions, and to give the applicant more certainty about the likelihood of the proposals being accepted. A consultation process was then carried out, which identified issues that had not been addressed during the pre-application discussions. This led to the further meetings during 2008 and 2009. The application was then amended in June 2009 and a fresh round of consultation took place. There were no further minuted meetings after this date. The Council has confirmed that it has conducted electronic searches of both the electronic planning file as well as the relevant case officer's hard drive to ensure that no additional information is held.
18. The complainant points out that in an email dated 2 March 2010, the Council states that it met with the developer on 27 February 2010. The Council has confirmed to the Commissioner that this meeting did take place, but that no minutes were produced as a result of this. The Council explained that the meeting was held only to explain the contents of a letter sent by the Council to the developer, and so no minutes were taken. The Council has provided a copy of this letter to the Commissioner. More generally, the Council states that several informal discussions took place with the developers, but that no minutes were taken at these meetings.
19. The Commissioner accepts that on the balance of probabilities, the Council has disclosed all of the minutes that it holds relevant to the complainant's request. The Commissioner notes that all of the minuted meetings were held to discuss specific issues relating to the application. After the amended application was resubmitted, there is nothing to suggest that any further formal meetings were necessary. The complainant has not provided any explanation for why he believes that more minutes are held, although he has expressed his concern at the fact that no minutes were created as a result of some discussions. However, this matter falls outside of the Commissioner's remit.

20. The Commissioner's conclusion is that the Council has disclosed all of the information that it holds in response to the complainant's request, and consequently it has complied with regulation 5(1).

Does the Council hold any information within the scope of the complainant's third request?

21. The complainant's third request was for "Public and on line information. Confirmation please that each should contain similar information to the other particularly for those who do not own or use a computer". The Commissioner has explained to the complainant that he can only investigate whether the Council holds any information about whether it makes the same information available online and in the hard copy public files.
22. The Council has explained to the Commissioner that its planning application files are held in electronic format. Any correspondence or relevant documentation is scanned onto this system. It makes the documents that are required to be provided within the Part 1 planning register available to view online, along with copies of representations and consultation responses received about the application. The Council does not keep a hard copy duplicate of the application documents, but will provide a paper copy of a document to view if a member of the public requests this. The Council's publication scheme provides details of the contact details of the planning department who can make this information available. However, the Council states that it does not hold any written document stating that electronic and hard copies of the planning application file will contain the same information. No policies about access to information of this nature exist.
23. The complainant has not provided any explanation for why he believes the Council holds information of this nature. The Commissioner understands that the complainant's wider complaint is that additional information – such as correspondence with the developer – should be made available in the application file, and that identical information should be made available both online and in hard copy for inspection. However, the Commissioner cannot comment on what information *should* be included within a planning file; his remit is only to regulate whether a public authority has handled requests in accordance with the EIR. The complainant alleges that in the past, he has noted that different information has been made available in the online and hard copy files. However, this does not form part of the complaint under investigation.

24. On the balance of probabilities, the Commissioner is satisfied that the Council does not hold any information within the scope of the complainant's request for "Public and online information...confirmation... that each should contain similar information to the other".

Regulation 5(2)

25. Regulation 5(2) provides that information should be provided in accordance with regulation 5(1) "as soon as possible and no later than 20 working days after the date of receipt of the request".
26. The complainant's original request was made on 1 March 2010. The Council failed to disclose information relevant to the complainant's second request for minutes of meetings until 12 July 2010. Consequently the Commissioner finds that the Council has breached regulation 5(2).

Regulation 14

27. Where no information is held in relation to a request, a public authority should cite the exception at regulation 12(4)(a), which applies where "it does not hold that information when an applicant's request is received". Regulation 14(3)(a) provides that the refusal notice should detail the specific exception the public authority relies upon.
28. The Council has confirmed that no information is held in relation to the complainant's third request, for confirmation that the same planning file information was made available online and for inspection. However, it failed to issue the complainant with a refusal notice explaining it relied upon the exception at regulation 12(4)(a). Consequently, the Commissioner finds a breach of 14(3)(a).

The Decision

29. The Commissioner's decision is that the Council breached regulation 5(2) by failing to provide information relevant to the complainant's second request within the statutory limit of 20 working days. It has also breached regulation 14(3)(a) by failing to cite the specific exception that it relied upon in withholding information. However, he accepts that the Council has disclosed all of the information that it holds within the scope of the complainant's requests.

Steps Required

30. The Commissioner does not require the Council to take any further action.

Right of Appeal

31. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 31st day of May 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1)

In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1)

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.

Regulation 5(2)

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.

Regulation 12 - Exceptions to the duty to disclose environmental information

Regulation 12(4)

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;

Regulation 14 - Refusal to disclose information

Regulation 14(1)

If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2)

The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3)

The refusal shall specify the reasons not to disclose the information requested, including –

- (b) any exception relied on under regulations 12(4), 12(5) or 13; and

(c) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).