

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

Date: 15 July 2013

Public Authority: Uttlesford District Council
Address: Council Offices
London Road
Saffron Walden
Essex
CB11 4ER

Decision (including any steps ordered)

1. The complainant has requested information relating to a planning decision in their local area. Uttlesford District Council (the "Council") provided some information within the scope of the request but denied holding other information. It upheld this at internal review although there was a considerable delay before it conducted that review.
2. The Commissioner's decision is that the Council does not hold other information within the scope of the request but that it has contravened Regulation 11 of the EIR by failing to conduct an internal review within the time required.
3. No steps are required.

Request and response

4. On 25 October 2013, the complainant wrote to the Council and requested information in the following terms:
 - "1 The case file for UTT/1360/12/FUL
 - 2 All notes, minutes, correspondence and other communications, external and internal, relating to Cranwellian, CM22 6NB
 - 3 Any written permissions given by Uttlesford concerning waving of conditions or erection of buildings and fences relating to UTT/0008/05/REN

4 Details and communications external and internal relating to Enforcement concerning Cranwellian

5 Details including agendas, attendees, duration and informal notes taken at any meetings concerning Cranwellian whether minuted or not

6 Relevant extracts from databases holding detail concerning Cranwellian

I would expect to find communications not only within Uttlesford Planning, but also enforcement and environmental health. I am aware of Enf/218/07/b and others including the drainage file dealt with by [named individual] in 2007.

If specific documentation is available on your website, please indicate where so that I can obtain these myself. Scanned copies burned to CD are acceptable if this is a cheaper and more convenient method."

5. The Council responded on 15 November 2012. It provided some information and refused to provide any personal information relating to members of the public. It directed the complainant to its website for other information and explained that old planning applications were available to view on microfiche at its offices. It explained that the property in question was not on its Contaminated Land Register because "the contamination is too recent to feature on our list of risk assessments to be carried out on land which has the potential to be contaminated by historic useage". It explained how risks would be managed for land that was more recently contaminated.
6. The complainant requested a response to items 5 and 6 on 19 November 2012 and on 4 December 2012; the complainant wrote to the Council to advise that the following items had not been provided:
 - Any written permissions given by Uttlesford concerning waving of conditions or erection of buildings and fences relating to UTT/0008/05/REN
 - Details including agendas, attendees, duration and informal notes taken at any meetings concerning Cranwellian whether minuted or not
 - Relevant extracts from databases holding detail concerning Cranwellian
 - The drainage file dealt with by [named individual] in 2007".
7. The complainant asked the Council to confirm or deny whether it held information in relation to the first three items. She also identified a gap in records on the Cranwellian file provided to her to cover the period between the periods 29 June 2011 and 18 May 2012 and asked for confirmation or denial as to whether any records were held from this period.

8. The Council acknowledged this as a request for internal review and gave a deadline date for response of 6 February 2013. It eventually provided the outcome of its internal review on 5 March 2013 following the Commissioner's intervention.

Scope of the case

9. The complainant initially contacted the Commissioner on 10 January 2013 to complain about the way his request for information had been handled. Following an exchange of correspondence, it was established that she continued to seek access to the following information:
 - Details including agendas, attendees, duration and informal notes taken at any meetings concerning Cranwellian whether minuted or not. (She did not agree that she had been provided with all the information the Council holds within the scope of this request.)
 - Relevant extracts from databases holding detail concerning Cranwellian. (She did not agree that she had been provided with all the information the Council holds within the scope of this request.)
 - The drainage file dealt with by [named individual] in 2007. (She did not agree that she had been provided with all the information the Council holds within the scope of this request.)
 - Records on the Cranwellian file between the periods 29 June 2011 and 18 May 2012. (She disputed the Council's assertion that it does not hold this information.)

Reasons for decision

Regulation 2 – Environmental information

10. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR. The Commissioner considers that the information requested falls within regulation 2(1)(c): information on:

"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"

11. Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information

requested by the complainant to be environmental information, because the information relates to a planning application.

Regulation 5 – Is requested information held?

12. Regulation 5(1) of the EIR provides that “a public authority that holds environmental information shall make it available on request”. A public authority may only refuse to disclose information where an exception applies.
13. The matter at issue here is whether the Council holds the 4 items listed in the “Scope of the Case” section above.
14. In its letter of 5 March 2013 to the complainant (where it eventually set out the outcome of its internal review) it said:
 - “1. There are no conditions which have been waived in relation to UTT/0008/05/REN.
 2. There are regular meetings between planning officers and enforcement officers to discuss enforcement issues. These meetings do not have a formal agenda, merely a list of properties to be discussed. The meetings are not formally minuted but there are brief notes which are kept. I enclose copies of the notes of meetings for the 14 September 2010, 28 September 2010, 8 February 2011, 8 March 2011 and 12 April 2011 when Cranwellian was discussed. The remainder of the notes have been redacted as they relate to other matters not relating to Cranwellian and the information relating to those properties is data protected.
 3. The only database with details concerning Cranwellian is the planning file. I understand a full copy of this was supplied to you.
 4. [Named individual’s] work regarding drainage was passed to Essex County Council. It would appear there is no formal file relating to this particular property.”
15. It also confirmed that the documents supplied to her concerning pre-application advice is complete and that there is no other documentation. It also explained the time gap as having arisen because of the gap between the date a particular form was submitted and the date a particular fee was paid.
16. The Commissioner asked the Council a series of questions to establish whether it held further information beyond what had been disclosed. These sought detail about the scope, quality and thoroughness of its searches.

17. The Council explained to the Commissioner that it examined all electronic and paper files that it held in order to prepare a response. It also searched the e-mail accounts of employees who may have been "engaged in these matters". Anything that it held would have been found. It also explained that none of the relevant staff use personal or laptop computers. All information is networked and accessible on the council's databases.
18. It said that when conducting electronic searches it used the relevant planning and enforcement reference numbers and the word "Cranwellian".
19. It said that no documents had been destroyed or deleted because this would not accord with its document retention policy for documents of this age. It also said that no officers involved have any recollection of meetings with the complainant. It said that Environmental Health Officers recall telephone conversations with her regarding contaminated land and an alleged blocked ditch but that these were not recorded. It added that it had no business purpose for doing so. It explained that the former conversation was in connection with giving advice and the latter was in the nature of a service request to ask for an inspection of the ditch. Other than to note that a visit was required, it reiterated that it had no business purpose in recording the content of that call.
20. Finally, it explained that the information that it was required to keep was disclosed in response to the request.
21. When considering an information access dispute as to whether further information is held, the Commissioner considers the matter to the civil standard of proof, that is, on the balance of probabilities. The Commissioner has considered the Council's response and has concluded that, in the absence of any evidence to the contrary and, on the balance of probabilities, it has provided the complainant with all the information it holds within the scope of her request. Its searches were of sufficient scope, quality and thoroughness. The Commissioner also thinks that the Council's explanation about the time gap in the records is wholly plausible.
22. While the Commissioner is satisfied that all the information described in the request has been disclosed, he is concerned about the Council's overall handling of the request. In particular, he notes the delay that arose in responding to the complainant's request for an internal review.

Regulation 11

23. Regulation 11(3) provides that upon receiving representations from an applicant unhappy with a response to a request for information, the

public authority should review its response. Regulation 11(4) provides that the outcome of this internal review should be communicated to the applicant within 40 working days.

24. In this case, the complainant clearly requested an internal review 19 November 2012 and 4 December 2012. The Council acknowledged this on 7 December 2012. However, it did not set out its final position for the complainant until 5 March 2013.
25. The Commissioner recognises that correspondence between the parties has been quite detailed and protracted. However, the Council acknowledged that there had been a delay in completing its internal review.
26. In failing to conduct an internal review within 40 working days of the review being requested, the Council breached regulation 11(4).

Right of appeal

27. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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
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