

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

Date: 16 October 2013

Public Authority: Oxford City Council

Address: Town Hall
St. Aldates
Oxford
Oxfordshire
OX1 1DS

Decision (including any steps ordered)

1. The complainant has requested information about a withdrawn planning application on land near Collingwood Close, Oxford. The council responded and provided the information it held however the complainant considers that the council purposely delayed responding to him until the twentieth working day. He also considers that the council has a policy of not recording information in order that FOI requests can be responded to by stating that no information is held. He considers that the Commissioner should require the council to make records of all of its dealings in this respect.
2. The Commissioner's decision as regards the date of the response is that it was reasonable for the council's response to be issued on the twentieth working day. The council was closed for a period of one week over the Christmas period and is likely to have been short staffed in the run up to Christmas due to officers taking leave. The Commissioner has also outlined to the complainant that he is not able to take issue with the council's records management policies in this instance.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 29 November 2012, the complainant wrote to the council and requested information regarding with withdrawal of a planning application on a specific plot of land by a developer. The Commissioner does not have a copy of the request however he does have a copy of the council's responses to the request which include a précis of the request and acknowledges the date upon which it was received.
5. The council responded on 31 December 2013. It provided a copy of an email from the developer which said that the application was withdrawn. It said that this withdrawal followed a telephone discussion with a planning officer, but that no records had been taken of that call. However the council did provide details of the conversation to the complainant which explained what the planning officer had outlined to the developer which had prompted the application to be withdrawn.
6. The complainant asked the council to carry out an internal review on 31 December 2012. The council did not initially do this until the intervention of the Commissioner. It then wrote to the complainant on 26 April 2013. It stated that it considered that its response had been provided within the correct time period for response, and that it did not make a record all telephone conversations, however in this case it had provided an explanation in lieu of a record of the conversation. It therefore considered that it had complied with the requirements of the Regulations.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He considers that the council breached the requirements of the Regulations in that it did not respond to his request as soon as possible, but purposely waited until the last possible day to respond to him.
8. He also considers that the council has sought to purposely circumvent the Act or the Regulations by not recording information which it was relatively clear would be requested by interested parties under the Act or the Regulations.
9. The Commissioner considers that there are 2 aspects to the complainant's complaint:
 - a) Whether the response was sent to him as soon as it could have been, and

- b) Whether the council has sought to deliberately circumvent the Regulations by not recording information which was relevant to the application and which was likely to be requested by interested parties.

Reasons for decision

10. 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."

11. The complainant submitted his request for information by email on 29 November 2012. The council responded on 31 December 2012. Taking into account the bank holidays on Christmas Day, Boxing Day and 30 November 2012 (as this was a bank holiday in Scotland (St Andrews Day)) the 20th working day was 31 December 2012. On the face of it therefore the council's reply fell within 20 working days and there was no breach of the Regulations in this respect.
12. The Regulations stipulate however that information should be provided 'as soon as possible'. The question to be considered in such cases is whether it was reasonable for the council not to respond until the day it did.
13. The complainant pointed out that the councils response was sent at 08:24 in the morning on the first day back after the council had been shut down for a week over Christmas. He suggests that it had compiled its response before Christmas, but delayed sending it to him until the last day possible. He considers that it is implausible that the officer responding to him did not start his investigations until 8 am on the day that the response was due. He also considers that it is unlikely that he would have received information on that day which would have required him to delay his response to that point.
14. The Commissioner has considered this issue without reverting to the council. He believes that the complainant has effectively outlined the reasons for the delay in this regard. The complainant acknowledges that the council was closed for a week during the period over Christmas. The week long closure would also have required council employees to complete all requests for information whose deadline for response fell before or within the period of closure. It had also lost a number of working days from the period it had to respond to the complainant. The closure period would include days which counted as working days for the

purposes of the Regulations, however the council would not have actually been open over that period in reality.

15. The Commissioner therefore considers that it is reasonable to conclude that the authority would have been working to tight deadlines and had an increased workload as regards responding to information access requests over that period. Staff numbers would also have been reduced during the run up to Christmas as officers began to take leave and in actuality the council would not have had 20 'actual' working days to provide its response to the complainant.
16. The Commissioner therefore considers that the council did respond as soon as possible and did not breach the Regulations in this respect.

Records management issues

17. The complainants considers that the council has deliberately not made records of its calls as regards this and other planning matters in order to evade providing information in response to information access requests. He considers that this results in a weakening of the Act and allows authorities to escape scrutiny on actions and decisions it has taken.
18. The Commissioner does have some empathy with this view in that a lack of records on important planning matters might allow an authority to escape scrutiny on advice it has provided.
19. However the Regulations do not provide the Commissioner with powers to require authorities to record information. They only provide the right for individuals to access information held in a recorded form by a public authority.
20. The Section 46 Code of Practice does address records management by public authorities. Section 8 states that:

"Authorities should ensure they keep the records they will need for business, regulatory, legal and accountability purposes."
21. It is therefore up to an authority to decide what information it is required to record and retain in order to be able to be accountable for its actions and to meet its business and statutory requirements.
22. The Commissioner therefore has no powers to require the council to take records of informal discussions as regards planning matters. If the complainant considers that as a result of the failure to take records his right to object to planning applications has been affected in some way then he should make a complaint to the council in the first instance. If he believes that the council's actions amount to maladministration he

can make a further complaint to the Local Government Ombudsman and/or to his member of parliament.

23. The complainant also stated that he has concerns about the relationship between the council planning officer and the developer. He says that they have worked together on a number of developments and the developer specifically requests that planning officer to consider his applications. This is not a matter for the Commissioner however. It relates purely to planning issues and the integrity of the planning process at the council.
24. Again, the Commissioner would advise that if the complainant considers that this might amount to maladministration then he is able to make a complaint to the Local Government Ombudsman.
25. The Commissioner has no powers to make a decision as regards this aspect of the complainant's complaint within this decision notice.

Right of appeal

26. 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

27. 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.
28. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
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