

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

Date: 28 September 2015

Public Authority: Manchester City Council

Address: PO Box 532
Town Hall
Albert Square
Manchester
M60 2LA

Decision (including any steps ordered)

1. The complainant requested information from Manchester City Council ("the council") concerning plans for a new primary school on the site of a former university building in Didsbury. The council initially supplied a copy of one email and details of meetings falling within the scope of the requests. The complainant alleged that more information was held. The Commissioner's decision is that the council should have considered the requests under the terms of the Environmental Information Regulations 2004 ("the EIR"). A small amount of additional information came to light during the Commissioner's investigation and this has now been provided. The Commissioner accepts that on the balance of probabilities, the council has now provided all the information that it held however, he finds that the council breached its obligations under regulation 5(1) and 5(2) to respond within 20 working days and provide all the recorded information held. The Commissioner also found a breach of regulation 11(4) of the EIR for the failure to conduct an internal review within 40 working days. There are no steps to take.

Request and response

2. On 19 May 2014, the complainant requested information from the council. For clarity, there were other requests and comments made

within the correspondence however the Commissioner has reproduced below only the parts which are relevant to this complaint.

"My freedom of information request regards details of the plans Manchester City Council have for a Primary School on the MMU Didsbury Campus site plus one other site.

a) Can you please provide copies of all documentation/communications both internally at the council and additionally externally with partners/schools/Department for Education/others, that you have had so far concerning all aspects of plans for a two or three form primary school on the MMU site from the 22nd January 2014 to today's date?"

3. The council responded on 18 June 2014. It said that following the approval of the Manchester Metropolitan University ("MMU") Didsbury Campus Estate Framework on 15th January, the council had had no documented communications with partners, schools or the Department for Education on this matter other than an email with Beaver Road Primary, which it had attached.

4. On 6 July 2014, the complainant wrote to the council again and said the following:

"May I seek clarification on a few points please?"

Other than the one email you have supplied as being stated 'documented' can you please confirm then whether any other communications of any kind have occurred between any officers of MCC and Beaver Road Primary School and the dates of any meetings and attendees?..."

5. The complainant sent a follow up email on 12 August 2014 expressing dissatisfaction with the delay. She asked the council to complete an internal review.

6. The council responded on 20 October 2014. The council acknowledged that it would have been appropriate to include details of meetings when it responded to the original request and it provided this further information regarding three meetings between the council and Beaver Road Primary on 7 March 2014, 9 April 2014 and 10 April 2014. It listed the attendees. The council said that these meetings were informal and there were no minutes or notes taken. The council added that if the complainant remained unhappy and wished the council to undertake a further internal review, it would do so or she could complain directly to the Commissioner.

7. The complainant wrote to the council again on the same day and said that she would like the council to confirm that other than the one email, there was no further information held falling within the scope of her requests.
8. The council eventually responded on 17 February 2015 following confirmation of the complaint to the Commissioner. It said that it had overlooked the need to respond to the complainant's correspondence on 20 October 2014 and it apologised. However, the council said that it wished to maintain that all the information held had been provided.

Scope of the case

9. The complainant originally contacted the Commissioner on 31 December 2014 to complain about the way her request for information had been handled. She complained again on 11 February 2015 following the council's internal review. The complainant asked the Commissioner to consider:
 - Whether the council held any more information falling within the scope of her requests (shown in italics above)
 - The council's failure to respond within 20 working days
 - The council's failure to complete an internal review

Reasons for decision

The EIR

10. The council dealt with the requests under the Freedom of Information Act 2000 ("the FOIA"). The council explained to the Commissioner that it had considered the requests under the FOIA because the requests did not appear to be concerned in any way with the environmental impact of the development of the site itself.
11. The Commissioner considers that the requests should have been considered under the terms of the EIR. Under regulation 2(1)(c) of the EIR, any information on plans affecting or likely to affect the elements or factors of the environment is "environmental information". The Commissioner's guidance and numerous previous decisions have made it clear that these provisions are to be interpreted fairly broadly to include any information *relating to* plans affecting the environment. These requests clearly relate to plans to build a new primary school, as part of an expansion of Beaver Road Primary School, albeit that the information

sought is not directly about an environmental impact. The requests clearly fall within the scope of the EIR in the Commissioner's view.

Regulation 5(1)

12. Regulation 5(1) of the EIR provides a general right of access to recorded environmental information held by public authorities. Public authorities should make environmental information available within 20 working days unless a valid exception applies.
13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹
14. The Commissioner asked the complainant to explain why she considered that more information may be held by the council. She told the Commissioner that it simply did not "add up" that the council have been communicating with a number of stakeholders for over a year but claim that only one email exists. She supplied information to the Commissioner that suggested to the complainant that more information was held. The information supplied was extracts of email communications dating from 23 September 2014 until 13 January 2015 between various parties, including the developer and MMU. The complainant also supplied extracts of the developer's public presentation, two sets of minutes from Beaver Road Primary School dated 31 March 2014 and 30 June 2014 and a news story published in the Manchester Evening News on 24 April 2015 relating to the school expansion plans. The complainant said that the school had discussed the matter a number of times but had kept it confidential.
15. When the council responded to the Commissioner's enquiries about this complaint, it provided some useful background information. It explained that on 15 January 2014, the council's executive approved a Regeneration Framework comprising a number of outline planning proposals and principles for the redevelopment of the MMU Didsbury

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

site. This framework was designed to support MMU to market the site and work with partners on detailed future proposals for development that would be in line with the council's strategic priorities for Manchester.

16. Following the approval of the framework, the council said that its role in relation to the proposed primary school had been limited to providing advice and information about forecasts of demand for extra school places in the area and how they could be provided at the highest possible quality. It said that the Education and Skill's Department's role at the time was to ensure that the extra primary school places provided would be most likely to result in excellent outcomes for pupils. The council said that its judgement was that the nearby Beaver Road Primary School, rated as "Outstanding" by Ofsted and significantly over-subscribed, met government criteria for school expansion and had the required leadership capacity and experience to expand successfully.
17. The council said that Beaver Road Primary School is an academy school and therefore completely independent of the council. Expansion of the school onto the MMU site would be a decision for the Beaver Road Academy Trust, not for the council.
18. The council initially said that it wished to maintain that the complainant had been provided with all the recorded information held falling within the scope of her request. The council said that all council officers were asked to provide copies of any email exchanges or other correspondence in connection with the potential Beaver Road Primary School expansion, and any other related documents. The council said that the relevant officers had reiterated that all the information held had been provided. It said that the officers concerned are a small group of generally senior officers, including the Director of Education and Skills at the council.
19. The council said that it had supplied one email from the head teacher of Beaver Road Primary School to the council's Head of Strategic Planning, Access and Inclusion. The council highlighted that the email was simply suggesting an introductory visit to the school and possibly to the MMU site and ends by asking for possible dates and times. The council said that it is likely that agreement of a date was done by telephone and it clarified that it had not found a record of any reply to this email.
20. With reference to the three meetings that took place between the council and Beaver Road Primary School, the council said that there was nothing unusual about the fact that these meetings were deemed to be informal and no minutes or notes were taken. It said that there were no significant decisions being made by the council and it would be reasonable for the officers concerned to judge that it would not be necessary to make a record of what was discussed. It clarified that there

was no reason why the council would have discussed the future planning application at this stage.

21. The council explained that there had also been some discussions with Didsbury CE School but these were informal and again, no minutes had been taken. The council has explained to the complainant these discussions ended because Didsbury CE School had applied to open a new free school, which the council thought was likely to succeed so Beaver Road Primary School seemed the most obvious candidate for future expansion. The council subsequently clarified that its view is that this information fell outside the scope of the request, a matter which the Commissioner has addressed in further detail below.
22. The council said that there was full engagement with other stakeholders during the consultation on the regeneration framework, led by the council in October and November 2013 however there were no additional enquiries except the complainant's own requests and small amount of press interest falling outside the scope of this request. The council clarified that there was no reason why the council would have discussed the matter with the Department for Education as suggested by the complainant's request.
23. The council said that it believed that the complainant had an incorrect impression of the level of its involvement in the proposals. It said that the content and persistence of the complainant's requests suggests that the complainant does not accept the council's explanation of its role in the possible school expansion. It said that her correspondence had referred more than once to "the council's plans for a new school". The council said that the complainant appears to be convinced that it had played a more active role in the school expansion plans than was actually the case. It said that it seems likely that this is the basis for the complainant's suggestion that more information was held. The council said that its limited involvement in the proposals at the time of the request means that there is little information and there would be no records in the council's main electronic or paper filing systems for development projects. The council added that it has no reason to believe that any information falling within the scope of these requests has been deleted, destroyed or mislaid.
24. The Commissioner considered the arguments and supporting documentation provided by the complainant revealing why she believes that further information was held. The majority of the documentation supplied by the complainant did not support her argument that further recorded information was held by the council at the time of the request. Much of it post-dated her request or did not appear to suggest that further information was held. Where there were some indications of discussions between the council and relevant parties, it appeared that

this information would fall outside of the scope of this complaint. It is worth noting that the council does not deny that further discussions took place, and additional information has since been supplied to the complainant in response to further requests. The Commissioner's investigation in this case is limited to the consideration of the extent of the recorded information held at the time of the complainant's requests which form the subject of this complaint.

25. The Commissioner did consider that there was merit in querying comments made in a developer's proposal supplied by the complainant which seemed to suggest that the council's involvement was more significant. The developer had made the following comments:

"The draft proposals are consistent with the framework and have been developed in conjunction with the Council".

The council told the Commissioner that it is important to note that the document supplied is the product of a private developer and is promotional in nature. It said that it is not unexpected that such a document would seek to demonstrate that plans of this nature have local authority input. The council said that its involvement in the regeneration framework was significant but since then its involvement had been limited.

26. The Commissioner also queried whether the council held any recorded information about its meetings with Didsbury CE School about this matter (referred to in paragraph 21 of this notice) since it had been able to provide the dates and details of attendees in relation to its meetings with Beaver Road Primary School. The council conducted further searches and located some details about its meetings with Didsbury CE School. It provided the calendar entries concerned to the complainant, along with a number of other emails concerning the Didsbury CE School. However, it subsequently expressed the view that this information was outside the scope of the request because it had understood that the requests made by the complainant were about the MMU site and the plans to expand Beaver Road Primary. In support of this, the council highlighted that a separate enquiry had been made about the Didsbury CE School within the correspondence from the complainant on 19 May 2014 as follows:

"f) Can you provide details of what is being planned in the next two to three years on the Ewing School site in West Didsbury".

27. The Commissioner contacted the complainant to clarify the scope of the requests forming the subject of this complaint. The Commissioner understood from her reply that the complainant was content for the scope of her request to be limited to the plans to expand Beaver Road

Primary on the MMU site. This appears to be supported, as the council says, by the complete context of all of the requests made on 19 May 2014 and the chain of correspondence between the council and the complainant following the requests which focused on Beaver Road Primary School.

28. As a result of its further searches, the council informed the Commissioner that it had also located some additional information which was within scope. It identified brief references to Beaver Road Primary in the minutes of the School Organisational Strategy Project Board in February and March 2014, which it provided to the complainant. It said that unfortunately, this information appears to have been overlooked because nobody recalled these brief references. The council said that the membership of the Strategy Board did include a number of additional officers from the Directorate for Growth and Neighbourhoods and Finance however the council said that it was extremely unlikely that they would have been in communication with Beaver Road Primary School so they had not been asked to search their email folders.
29. The references within the minutes were notable. The February minutes said "Work currently taking place around the Beaver Road expansion. The MMU site has been identified with discussions taken place with DfE". The March minutes said "A draft email has been prepared and ready to send to DfE once all agreed". As the council had previously said that there were no discussions with the Department for Education ("DfE"), the Commissioner queried this. The council said that it was not aware that any discussion took place and there were no other records. It said that unfortunately the minutes were too brief to understand the full context. It may be a mistake or it could be referring to discussions that another party other than the council may have had with DfE. The council said that it was not able to clarify why the minutes referred to this.
30. As set out above, the Commissioner will consider disputes over whether information was held "on the balance of probabilities". The Commissioner found the council's representations persuasive. The council has been able to explain the searches it has undertaken and it appears that these searches were appropriate in scope. It has confirmed that no information has been destroyed, deleted or mislaid. Furthermore, the council has been able to give a reasoned account as to why further information was not held based on the wider context of its role in this matter.
31. As noted above, a small amount of additional information has been identified and made available to the complainant. The failure to provide that initially was a breach of regulation 5(1) and 5(2) of the EIR. However, the council maintained that no further information was held.

32. It appears that the complainant had assumed that the council's level of involvement in the primary school expansion plans at this point in time was more significant than was actually the case. To some extent, that is a reasonable misunderstanding. However, the council has clarified the reality of its involvement at this time. While the Commissioner can appreciate why the complainant may have expected more significant recorded information to be held relating to the council's discussions with Beaver Road Primary School, particularly given that the council would ultimately consider a planning application relating to the expansion, the council has made it clear that it was exercising an informal advisory role when it met with the school on the three occasions concerned. This background provides perspective in terms of the limited information that was held and there is no convincing evidence available to the Commissioner that would suggest that further information was held within the scope of the complainant's requests.

Procedural issues

33. There is a general duty under the EIR to respond to requests for information within 20 working days. The council did not respond within 20 working days, which was a breach of regulation 5(2).
34. The complainant also complained to the Commissioner that the council had failed to carry out an internal review. There is an obligation under regulation 11 of the EIR to carry out an internal review within 40 working days. The complainant sought clarification about the council's initial response on 6 July 2014. Any expression of dissatisfaction with an initial response should trigger an authority's internal review process. However, the council did not respond until 20 October 2014, outside of the 40 working days. This was a breach of regulation 11(4) of the EIR.

Right of appeal

35. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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
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