

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 October 2015

Public Authority: East Hampshire District Council

Address: Penns Place
Petersfield
Hampshire
GU31 4EX

Decision (including any steps ordered)

1. The complainant has requested a copy of a letter sent by East Hampshire District Council to one of its Councillors -Councillor Thomas, in connection to a planning application. The Council advised the complainant that it does not hold the letter he seeks.
2. The Commissioner's decision is that East Hampshire District Council has complied with Regulation 5(1) of the EIR. He is satisfied that, on the balance of probabilities, the Council does not hold a copy of the notification letter.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 29 December 2014, the complainant wrote to East Hampshire District Council and requested information in the following terms:

"Would you please provide a copy of the letter that was sent to Councillor Thomas once the draft officer's report had been prepared, similar to that sent to Councillor Glynis Watts regarding application 21280/010."
5. The complainant's request relates to planning application 22160/005 at 1-3 Gloucester Close, Four Marks, Alton.

6. The Council acknowledged the complainant's request on 31 December 2014 and advised him that it would be dealt with under the Environmental Information Regulations 2004. The Council gave the complainant's request the reference CC 31987.
7. On 15 January 2015, the Council sent the complainant its formal response to request CC 31987. The Council advised the complainant that it had been unable to find any record of the correspondence which he seeks. The Council explained that it had searched all electronic and hard copy records relating to the application and also the email records of the case officer.
8. On 18 January 2015, the complainant asked the Council to conduct an internal review in respect of his request. In his letter the complainant stated –

"I find it inconceivable that there is no trace of such an important document and I am not convinced that a full and proper search for the requested 'notification letter' has been undertaken."
9. The complainant asserted his belief that the Council's IT system would hold a record of the letter. He made reference to a response made by the Council to a previous request for information. In that response, the Council had informed him that a similar letter had been sent to the ward councillor from the Council's IT system, as part of the Council's adopted scheme of delegation to officers set out in the Council's Constitution.
10. The complainant pointed out that the Council had not mentioned whether it had searched the email records of Mr Murray, whose signature was on the notification letter, or any enquires made to Councillor Thomas as to whether she retains a copy of the email to which the notification letter and draft report was attached.
11. On 18 May 2015, the complainant informed the Commissioner that he had not received the Council's internal review.

Scope of the case

12. The complainant initially contacted the Commissioner on 23 March 2015 to complain about the way his request for information had been handled.
13. The Commissioner has investigated whether the Council holds a copy of the letter which the complainant believes was sent to Councillor Thomas. This notice is his decision.

Reasons for decision

14. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –

'(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 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.'

15. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.

16. The Commissioner has considered the nature of the information sought by the complainant. He notes that the information relates to a planning application. In the Commissioner's opinion the information falls to be considered under the Environmental Information Regulations 2004.

Duty to make environmental information available on request

17. Regulation 5(1) of the EIR states that –

"...a public authority that holds environmental information shall make it available on request."

18. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds the information sought by the complainant. He makes this determination by applying the civil test of the balance of probabilities which is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.

19. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the

information sought by the complainant and questions about its possible deletion/destruction.

20. The Council has responded to the Commissioner's enquiries by confirming that it does not hold the letter which the complainant seeks.
21. The Council advised the Commissioner that the letter is a document which is generated by the Council's 'Acolaid' planning system. This system is used to notify local Councillors that a planning application has been received. The purpose of the notification is to give the local Ward Councillor the opportunity to decide whether or not to ask that the planning application be considered by the Council's planning committee rather than by an officer acting under the delegated powers which are provided by the Council's Constitution.
22. The Council has advised the Commissioner that it has searched the records held within the Acolaid planning system for the letter sent to Councillor Thomas. It has further advised the Commissioner that its searches did not find that letter.
23. The complainant pointed out that the Council had not mentioned whether it had searched the e-mail records of Mr Murray, whose signature was on the notification letter, or whether any enquiries had been made to Councillor Thomas as to whether she retains a copy of the e-mail to which the notification letter and draft officer's report was attached. The Commissioner put this assertion to the Council.
24. The Council confirmed that it has carried out a search of Mr Murray's email records and the notification letter was not found. The Council points out that it is extremely unlikely to be found in Mr Murray's email account as the signature would have been placed on the letter electronically by the user of the Acolaid system and not usually personally by Mr Murray.
25. The complainant also advanced an assertion that the Council's IT system would hold a record of the letter. Accordingly the Commissioner put this to the Council.
26. In response, the Council advised the Commissioner that its IT system has been searched and no copy of the letter to Councillor Thomas has been found. The Council's position is that the letter does not exist.
27. Additionally, Councillor Thomas was asked whether she has a copy of the notification letter. Councillor Thomas confirmed that she does not have a copy of any e-mail containing a notification letter.
28. The Commissioner has considered the representation made by the Council in this matter. Applying the civil test of the 'on balance of

probability' and in the absence of any evidence to the contrary, the Commissioner has decided that the Council does not hold the letter which the complainant seeks.

29. The Commissioner's decision is that the Council has complied with Regulation 5(1) of the EIR.

Right of appeal

30. 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

31. 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.
32. 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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Wilmslow
Cheshire
SK9 5AF