

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

**Decision notice**

**Date:** 13 October 2015

**Public Authority:** South Oxfordshire District Council

**Address:** Abbey House  
Abbey Close  
Abingdon-on-Thames  
OX14 3JE

**Decision (including any steps ordered)**

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1. The complainant requested notes of site visits by South Oxfordshire District Council officers to the site of works that had been taking place within an area of woodland. He also asked to see related correspondence between SODC and third parties including the Forestry Commission. SODC initially responded under FOIA but subsequently applied the Environmental Information Regulations 2004 (SI 2004 No 3391) (the EIRs) and disclosed a considerable volume of information, including items from its correspondence with the Forestry Commission. SODC withheld some personal information relying on the EIR regulation 13(2) exception and additionally relied on the exception in regulation 12(4)(a) in maintaining that no more information was held that came within the scope of the request.
2. The complainant did not challenge the application of the regulation 13(2) exception to the personal information being withheld. However, he remained dissatisfied and approached the Commissioner who investigated and made detailed enquiries of SODC. The Commissioner is satisfied on the balance of probabilities that SODC is not withholding further information and therefore he upheld the SODC reliance on the regulation 12(4)(a) EIR exception. He also found that SODC did not fully comply with regulation 5(2) in that not all of the requested information had been provided within 20 working days of the date of the request.
3. The Commissioner requires no further steps to be taken.

## Request and response

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4. The information request concerned works that had been taking place within an area of woodland and arose within the context of a dispute about a planning matter. SODC initially applied FOIA but later relied instead on the EIRs. SODC disclosed a considerable amount of information in response to the requests but the complainant remained concerned that further information was held and was being withheld either intentionally or by way of oversight.
5. On 3 February 2015, following an earlier request of 14 November 2014 and previous FOI and subject access requests, the complainant wrote to SODC and requested information in the following terms:
  - 1) *I need confirmation of when [named officer, officer A]'s undated site visit notes were first written and the date they were last amended. Please do not request this either from the officer or the department ... it is essential that the information is accurate and unmolested, and therefore I would ask that an unconnected individual provides this information.*
  - 2) *Please confirm that the only site visit notes following the January 2014 [visit] were those made by [named officer B]. I find it unusual that four Officers were present for a meeting that lasted an hour and a half and yet only 7 lines of notes were taken. Most of which were inaccurate, and did not deal with several of the previously mentioned alleged breaches.*
  - 3) *Please confirm that [named officer C] has made no notes, emails or other documentation to do with [a named property "the property"] and the trees, despite having visited twice and being SODCs [job title]. The FOI request has no information from him whatsoever.*
  - 4) *Please confirm that no correspondence has been made between SODC and The Forestry Commission. The FOI request does not contain any correspondence either to or from The Forestry Commission. Other material within the FOI request refers to communications with the Forestry Commission, so I find this unusual.*
  - 5) *Please forward me full details of what was sent regarding the property to both the [names], their solicitor and their landscape architect in July 2014. This has not been included.*
  - 6) *(A further request for the job title of officer C was answered on 19 February 2015.)*
6. At the time of the 3 February 2015 information request, SODC had already disclosed a substantial amount of information in response to earlier information requests.

7. In a response dated 19 February 2015 SODC said that officers had spent in excess of 220 hours compiling information to answer previous information requests and declined to use any further resources to answer this request.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 12 March 2015 to complain about the way his request for information had been handled. He said that he believed SODC continued to withhold certain documents and that some of the disclosures made had been made late and outside the timeframe that might have enabled him to consider Judicial Review proceedings in a connected matter. He said he did not believe that SODC had acted fairly and considered that it had deliberately withheld, and/ or delayed the release of, certain information to frustrate his legal proceedings against it.
9. During the Commissioner's investigation, SODC decided that the EIRs rather than FOIA applied and he has considered the application of the relevant EIR exceptions at Regulations 12(4)(a) and 13(2). He has also considered the information held by SODC and noted the disclosures of information made by SODC before the 3 February 2015 request and the further disclosures made by it during the course of his investigation.
10. The Commissioner considered whether there was further information held by SODC that had not so far been disclosed to the complainant or declared to him. He considered whether SODC had applied regulation 12(4)(a) of the EIR appropriately and whether or not, on the balance of probabilities, SODC hold the requested information.
11. Also during the Commissioner's investigation, the complainant indicated that he had received from the Forestry Commission copies of correspondence between itself and SODC. He said SODC had not confirmed the existence of that information at the time of the information request on 3 February 2015. Later, in June 2015, SODC disclosed to the complainant the relevant information from its own files of correspondence with the Forestry Commission.
12. SODC indicated that it holds some additional related information that is the information of third parties who have made representations to it. SODC withheld these relying on the exception at EIR regulation 13(2). The complainant did not challenge this decision and the Commissioner did not investigate that exception.

13. The Commissioner has considered whether the Council handled this request in accordance with the EIR. Specifically he considered whether the Council holds further information within the scope of the request that it has not so far provided or declared to the complainant.
14. An arson attack against SODC premises on 15 January 2015 caused it considerable disruption which contributed to some delay in progressing this matter.

### **Reasons for decision**

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15. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
16. During his investigation, the Commissioner has discussed the matter in detail with SODC. His findings in respect of each part of the request are as follows. Part 1) of the request was for:
  - 1) *I need confirmation of when [named officer, officer A]'s undated site visit notes were first written and the date they were last amended. Please do not request this either from the officer or the department ... it is essential that the information is accurate and unmolested, and therefore I would ask that an unconnected individual provides this information.*
17. SODC told the Commissioner that officer A's notes of her relevant site visit, which took place on 31 July 2015, had been entered into their electronic database on 29 September 2014. SODC added that it was not possible for them to say if the notes had been amended since that date.
  - 2) *Please confirm that the only site visit notes following the January 2014 [visit] were those made by [named officer B]. I find it unusual that four Officers were present for a meeting that lasted an hour and a half and yet only 7 lines of notes were taken. Most of which were inaccurate, and did not deal with several of the previously mentioned alleged breaches.*
18. SODC said that it had reviewed its notes of the site visits. Five visits had been made by SODC officers to the property between 6 November 2013 and 9 July 2014. SODC confirmed that each site visit had been

documented within its systems and notes had subsequently been supplied to the complainant. Copies of these notes were provided to the Commissioner during his investigation.

*3) Please confirm that officer C has made no notes, emails or other documentation to do with the property and the trees, despite having visited twice and being SODCs [job title]. The FOI request has no information from him whatsoever.*

19. SODC said that officer C did not write detailed notes during his site visits but normally placed detailed notes of his visits on the SODC system once the visit had been concluded. Initially SODC had withheld these notes from the complainant as they contained information relating to the Forestry Commission. On 18 June 2015, during the course of the Commissioner's investigation, SODC disclosed these notes to the complainant together with other correspondence it had conducted with the Forestry Commission.

*4) Please confirm that no correspondence has been made between SODC and The Forestry Commission. The FOI request does not contain any correspondence either to or from The Forestry Commission. Other material within the FOI request refers to communications with the Forestry Commission, so I find this unusual.*

20. SODC confirmed to the Commissioner and the complainant that it held correspondence with the Forestry Commission which it had initially withheld. This was disclosed to the complainant on 18 June 2015

*5) Please forward me full details of what was sent regarding the property to both the [names], their solicitor and their landscape architect in July 2014. This has not been included.*

21. SODC told the Commissioner that it had a strict policy of not disclosing the names and addresses of complainants making representations to it as it needed to encourage residents to interact with their council without fear of repercussion. SODC said that this information had been withheld from the complainant and continued to be withheld. It relied on the EIR regulation 13(2)(a) exception as justification for this; SODC also decided that the public interest balance favoured maintaining the exception.

22. The Commissioner has reviewed samples of the relevant correspondence and is satisfied that the withheld information is the

personal information of the relevant persons. As the complainant did not challenge the withholding by SODC of this information, the Commissioner did not consider this exception further.

*6) (A request for the job title of officer C was answered on 19 February 2015.)*

23. On 18 June 2015 SODC provided the Commissioner with assurance that it was not withholding any other information from the complainant and that the full set of information within the scope of the request had now been supplied to the Commissioner to assist in his investigation.
24. The complainant still remained unconvinced that all the relevant information had been provided to him and asked in particular what information, including photographs, SODC had released externally. SODC assured the Commissioner that, in corresponding with third parties, it had not released data, findings of its own investigations or photographs to anyone external to itself other than to the Forestry Commission. The Commissioner has seen nothing during his investigation to call into question this assurance.
25. The Commissioner noted that, towards the end of 2014, during the period leading up to the 3 February 2015 information request, SODC had employed a specialist agency contractor to interrogate its relevant planning databases and email systems, including correspondence with councillors, in its searches for information to satisfy the complainant's previous information requests. This work was estimated to take five days and then required officer review so that the officer time expended was estimated by SODC to be in excess of 40 hours.
26. The Commissioner has seen that considerable resources have been used by SODC to undertake relevant searches for the information requested. SODC have provided assurance to him that, aside from the personal information of third parties, no further relevant information is held.
27. As the complainant now has the information he requested, the Commissioner has not considered any further SODC's initial reluctance to disclose it as doing so now would serve no useful purpose.
28. The Commissioner considered that SODC has taken reasonable steps to locate the requested information. In the light of the assurances he has received and in the absence of evidence suggesting that further undisclosed information really is held, the Commissioner is satisfied on the balance of probabilities that the Council has provided the complainant with all the information it holds that falls within the scope of the request. The Commissioner is therefore satisfied that the

exception at regulation 12(4)(a) now applies although it had not yet been fully complied with at the date of the information request.

29. Regulation 12(4)(a) of the EIR is subject to the public interest test. However, the Commissioner considers that carrying out the test will serve no useful purpose where, as here, it is clear that a public authority does not now hold undisclosed information. The Commissioner cannot consider the public interest factors for and against disclosure when there is no recorded information held for potential disclosure.
30. The EIR regulation 5(2) requires that information should be made available no later than 20 working days after the date of receipt of the request. In this matter, while SODC had provided the bulk of the relevant information before the 3 February 2015 request was made, it did not fully complete the disclosure process until the June 2015 disclosures. As provision of the final sets of information took place outside of the 20 working days required by regulation 5(2), the Commissioner's decision is therefore that the council's response did not fully comply with the requirements of regulation 5(2).

## Right of appeal

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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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**Cheshire**  
**SK9 5AF**