

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 August 2017

Public Authority: Suffolk County Council
Address: Endeavour House
8 Russell House
Ipswich
Suffolk
IP1 2BX

Decision (including any steps ordered)

1. The complainant has requested information related to named planning applications. Suffolk County Council (the Council) provided information falling within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold information further to that already provided.
3. The Commissioner notes that the Council provided its response outside of the statutory twenty working days and has therefore breached regulation 5(2) of the EIR.
4. The Commissioner does not require the Council to take any steps.

Request and response

5. On 8 December 2016, the complainant wrote to the Council and requested information in the following terms:

I would like to see the following information in connection with Suffolk Highways consultation ref: SCC Ref: 570\CON\3761\16 and earlier related consultations:

- 1. Details of communications and meetings between any of the following parties: [third party company] (the applicant) or its agents, Suffolk County Council (the highways authority) and Waveney District Council (the planning authority), in respect of the Victoria St. access, its dimensions and visibility splays in connection with planning applications: DC/15/1016/FUL, DC/16/2587/FUL and DC/16/3381/FUL and agreement reached to justify the sub-standard access specification deemed acceptable for DC/16/3381/FUL.*
 - 2. Details of the road safety risk assessment carried out for the first consultation in respect access specification for DC/16/3381/FUL in relation to the traffic speeds and the forecast increase in traffic for Victoria St, and those parts of the Conservation Area affected by the diverted traffic flows.*
 - 3. Details of the road safety risk assessment carried out in relation to the Swan carriage archway and the impact of the forecast 17% reduction of vehicle movements resulting from the Swan refurbishment scheme DC/16/2587/FUL and DC/16/3381/FUL.*
 - 4. Details (by reference to email correspondence or otherwise) of the further consultation request from Waveney District Council and steps taken to provide a response in relation to DC/16/3381/FUL and (a) the applicant's Traffic Report and (b) my critique of it in the form of Comments on Traffic Tech Note.*
6. The Council responded on 26 January 2017 and provided the complainant with information falling within the scope of the request. The Council redacted some information and cited regulation 13 as it considered the information to be personal data.
7. On 6 February 2017, the complainant wrote to the Council as he was not satisfied with its response. He also asked "*supplementary questions/requests*". The Council treated points 1 and 2 as a fresh request and point 3 as a request for internal review.

8. The Council provided the internal review on 7 March 2017 and explained that it does not hold road safety risk assessments as they are not a specific procedure undertaken by the Council. The Council also confirmed that a road safety audit was not submitted as part of the application. The Council explained that the information supplied with the planning application was considered and a site visit conducted to consider the information as part of the statutory consultation process. The Council explained that the site visit would take into account road safety issues but was not normally documented.

Scope of the case

9. The complainant contacted the Commissioner on 9 March 2017 to complain about the way his request for information had been handled.
10. The complainant confirmed that he considered that the Council must hold information further to that provided.
11. The complainant explained that some of the emails provided had footers from individuals at an external organisation that did not appear elsewhere in the email trail. The complainant also considered that the information provided showed a change of position by the Council and, therefore, the Council must have information regarding this.
12. The complainant also disputed that the first two points of his internal review request constituted fresh requests.
13. The Council confirmed that it considered the information requested in points 1 and 2 of the request for internal review constituted fresh requests for information as they were for information that, if held, would be internal communications.

14. The complainant states in his request for internal review:

"I have several further supplementary questions/requests in relation to the first of four requests"

The complainant then asks questions regarding correspondence he considers to be missing from the provided information and information regarding the Council's change of position on the planning application.

15. The complainant's first request states:

"Details of the communications and meetings between any of the following parties: [third party company] (the applicant) or its agents,

Suffolk County Council (the highways authority) and Waveney District Council (the planning authority)...."

16. The Commissioner considers that the complainant's request is for communications and meetings between the three parties and not for all communications by any of the three named parties.
17. The Commissioner considers that internal communications within the Council do not fall within the scope of request 1. She, therefore, considers that the Council was correct to treat points 1 and 2 of the internal review request as fresh requests.
18. The Commissioner will also only consider whether the Council holds further information regarding its change of position insofar as it falls within the scope of the request being considered in this notice.
19. The complainant confirmed that he did not dispute the redaction of information under regulation 13 of the EIR.
20. The Commissioner considers the scope of this investigation to be whether, on the balance of probabilities, the Council has provided all information held falling within the scope of the request.

Reasons for decision

Appropriate legislation

21. Regulation 2¹ of the EIR sets out the definition of environmental information. As the request is for information relating to specified planning applications, the Commissioner considers the requested information falls squarely within the definition of environmental information at regulation 2(c).

Regulation 5(1): Duty to make information available on request

22. Regulation 5(1) of EIR states:

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request"

¹ <http://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made>

23. In scenarios where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
24. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
25. The complainant confirmed that within the information provided, he had noted emails that included footers from the third party company but did not appear to have any correspondence within the email trail from this organisation. The complainant considers that the Council must hold information relating to this "missing" correspondence. The email trails were identified as File 16 and File 26 of the information provided by the Council.
26. The complainant explained that, for File 16, the email trail showed that the CEO of the Council had been blind copied into the email trail but that it was not apparent who by. The complainant considers it is likely to be a forwarded email from the third party company which also appears to be the opinion of one of the correspondents. The complainant also explained that this email trail contains a footer from the Chief Operating Officer of the third party company. The complainant considers this is conclusive proof that the email to the Council's CEO was from the third party company.
27. The complainant explained that, for File 26, he considers that an email sent by the Council CEO's assistant shows that the CEO was sent a copy of his email by a staff member at the third party company.
28. The complainant also notes a footer at the bottom of this email originating from the third party company.
29. For both email trails, the complainant considers that emails from and to the third party company have been redacted and no exemption cited.

The Council's position

30. The Commissioner wrote to the Council to request a submission and its comments regarding footers in the email trails.
31. The Council provided the Commissioner with an explanation of the searches made. The Council confirmed that it had contacted the departments involved in planning applications and asked them to search all electronic files, including emails, and any possible hard copy paper

files. The Council provided the Commissioner with a list of the search terms used which included:

- Variations of The third party company
 - Strategic Development (including email address)
 - 570\CON\3761\16
 - Consultations
 - Victoria Street planning application
 - Victoria St/Victoria Street
 - DC/15/1016/FUL
 - DC/16/2587/FUL
 - DC/16/3381/FUL
 - The Swan
 - Southwold Refurbishment
 - Access
 - Splays
 - Names of fifteen individuals, including email addresses.
32. The Council confirmed that its staff members do not use “personal computers” and the searches above would cover all information held by the Council.
33. The Council provided the Commissioner with a copy of its Records Management Policy. It confirmed that “Corporate Records” were kept permanently by Suffolk Records Office. The Council confirmed that non-corporate records were retained and destroyed at departmental discretion on the basis of “best practice”.
34. The Council confirmed that it was likely that it had held non-corporate records, such as emails, that had been deleted prior to the request.

File 16

35. The Council confirmed that it had searched the CEO's emails for a copy of the email into which she had been blind copied and had been unable to locate this. The Council was unable to confirm who had blind copied the CEO into the email trail.
36. The Council confirmed that third parties were copied into the email trail, including the architect working on behalf of the third party company. The Council confirmed that it had not removed or redacted any emails within this email trail and that it had not held emails from the Chief Operating Officer named in the third party company footer that had originated in this email trail.

File 26

37. The Council explained to the Commissioner that the footer at the end of the email trail was received with the original email sent by the complainant. The Council explains that the complainant appears to have forwarded an email to himself before sending it on to the Council and the footer may have been included as part of this.

The Commissioner's position

File 16

38. The Commissioner has reviewed the email trail provided to the complainant and she notes the footer from the third party company is included at the bottom of the email trail.
39. The Commissioner also notes that, as confirmed by the Council, the email trail includes third parties, not employed by the Council, in the correspondence. The entirety of the correspondence is not, therefore, within the Council's control.
40. The Commissioner notes that the third party identified states that they have *"referred your email below to the client for further instructions"*. The following email is from the same third party individual stating *"I sent your comments off to [third party company]..."* and provides the clients opinion.
41. The Commissioner considers that it is possible that the footer has originated from the emails sent by and to the third party.
42. Regarding the email that blind copied the CEO of the Council into correspondence, the Commissioner notes that the CEO's response was sent seven months prior to the request being made.
43. Public authorities are not obliged to hold all information for an indefinite amount of time. The Council has confirmed to the Commissioner that it does not have an automated email retention period and emails are deleted at the discretion of the individual staff member. The Council confirmed, however, that staff are encouraged to keep their inboxes clear. The Council also confirmed that once an email it deleted, it is kept on the backup system for two weeks, at which point it is permanently deleted by the server.

File 26

44. The complainant has explained to the Commissioner that he considers the email from the CEO's assistant *"shows"* that the CEO was sent a copy of an email the complainant had sent to the third party company.

45. It is not apparent to the Commissioner how this email evidences that the complainant's email to the third party company was shared with the Council. Rather, it would appear to demonstrate that the assistant to the CEO forwarded on an email the complainant sent to two Council staff members and the Council's democratic services account.
46. The Council provided the Commissioner with the original email sent to them by the complainant. This included the footer from the third party company. The complainant also provided a copy which did not include the footer.
47. As set out at points 23 and 24, when considering complaints where the amount of information provided is disputed, the Commissioner will determine the case on the balance of probabilities. It is seldom possible to decide with absolute certainty whether or not further information is held.
48. It is also not in the Commissioner's remit to issue a decision on whether a public authority has ever communicated with a third party. The Commissioner's decision is whether the information was held at the time of the request.
49. The Commissioner has considered the searches performed by the Council, the amount of information provided by the Council, its explanations for why the information is not held and the complainant's concerns.
50. The Commissioner considers that, on the balance of probabilities, the Council does not hold any further information to that already provided.

Regulation 5(2): Statutory time for response

51. Regulation 5(2) of the EIR 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.

52. The Council provided the complainant with the requested information after 39 working days.
53. The Council has, therefore, breached regulation 5(2) of the EIR.

Right of appeal

54. 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

55. 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.
56. 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

Alun Johnson
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