

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

Date: 11 January 2018

Public Authority: North Hertfordshire District Council
Address: Council Offices
Gernon Road
Letchworth Garden City
Hertfordshire
SG6 3JF

Decision (including any steps ordered)

1. The complainant has requested information as to why his property was designated as being within green belt land following a review by the council. He also requested information as to why it was not included within the designated boundary of a village. The request followed the complainant making a previous subject access request under the Data Protection Act 1998 (the 'DPA') to the council following which information had been disclosed to him. The council providing him with links to documents on its website. Further to this it responded stating that it does not hold any further information beyond that which had been provided to him previously in response to his request under the DPA.
2. The Commissioner's decision is that on a balance of probabilities the council does not hold any further information falling within the scope of the complainant's request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 30 March 2017, the complainant wrote to council and requested information in the following terms:

"Please can you explain the reasons for these decisions and provide any internal documents, correspondence and reports which relate to them. Namely;

- 1. Why was [address redacted] not considered as a potential site for sustainable development in future.*
 - 2. Why was it not included in a revised Whitwell settlement boundary.*
 - 3. Why was [address redacted] placed inside a new Green Belt boundary."*
5. The council responded on 19 April 2017. It directed the complainant to the Strategic Housing Land Availability Assessment 2016 (the SHLAA), available at <https://www.north-herts.gov.uk/files/hou9-shlaa-2016-updatepdf> for answers to parts 1 and 2 of the request, and to the North Hertfordshire Green Belt Review, July 2016 (available at <http://www.north-herts.gov.uk/sites/northherts-cms/files/North%20Herts%20Green%20Belt%20Review%20-%20Draft%20July%202016.pdf>) for answers to the third part of his request.
6. The complainant wrote back to the council requesting that it reviewed its decision. He said:

"My request is for internal council documents, reports from officers, and any related emails and correspondence to explain why these decisions were made.

As none of this information was provided I ask for further information to provide the reasons for the published decisions.

[sentence redacted]. This fulfils none of the stated aims of Green Belt Policy..." and

"NHDC policy says the new Green Belt boundaries were subject to inspection by officers. I request to see their report and any related correspondence to discover the specific reasons why [address redacted] has been singled out in this way.

I request the relevant documents any additional internal reports or correspondence relating to all these decisions."

7. Following an internal review the council wrote to the complainant on 12 June 2017. It confirmed that no information is held beyond that which it had already provided links to. Effectively therefore, under the Regulations it applied the exception in Regulation 12(4)(a) (information not held).

Scope of the case

8. The complainant contacted the Commissioner on 23 June 2017 to complain about the way his request for information had been handled. He considers that further information should be held by the council falling within the scope of his request.
9. The Commissioner considers that the complaint is that the council has failed to provide information which it holds in response to the request.
10. As noted above, the complainant has previously made a subject access request to the council which it had responded to. For clarity, the request considered under the EIR relates to information which is not personal data belonging to the complainant.

Reasons for decision

Regulation 5 – Duty to make environmental information available on request

11. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request.
12. 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 is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held.
13. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that "*there can seldom be*

absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records". It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner will apply in this case.

14. In discussing the application of the balance of probabilities test, the Tribunal stated that, *"We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."* The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.
15. In coming to a decision in this case the Commissioner has considered the supporting evidence which was provided to him by the complainant in support of his submission that the requested information is held.
16. On 23 November 2017, as part of her investigation the Commissioner asked the council the following questions to determine what information it holds falling within the scope of the complainant's request:
 - [name redacted] of the council confirmed to [the complainant] that his specific request that [address redacted] be included within the revised village boundary plan would be considered in an email to him dated 10 September 2015. Did such a consideration take place, and if so, was any information specifically falling within the scope of [the complainant's] request for information generated when these considerations were taking place. Was any record retained of these considerations?
 - The complainant has said that the council indicated that the new green belt boundaries resulted from an inspection by officers. If this is correct notes/plans etc would presumably have been made by officers in order to record their findings and/or to facilitate the production of the final policy/plan. Please indicate why officers did not make any notes, or why those notes were not subsequently retained by officers or the council.

- What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?
 - Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.
 - Please confirm whether the relevant officers were asked whether they made any notes of their visits to the area around [address redacted].
 - If searches included electronic data, which search terms were used and please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.
 - If the information were held would it be held as manual or electronic records?
 - Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?
 - If recorded information was held but is no longer held, when did the council cease to retain this information?
 - Does the council have a record of the document's destruction?
 - What does the council's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the council describe the way in which it has handled comparable records of a similar age?
 - If the information is electronic data which has been deleted, might copies have been made and held in other locations
 - Is there a business purpose for which the requested information should be held? If so what is this purpose?
 - Are there any statutory requirements upon the council to retain the requested information?
 - Is there information held that is similar to that requested and has the council given appropriate advice and assistance to the applicant in line with the duty contained at Regulation 9 of EIR?
17. On 20 December 2017 the council responded to the Commissioner's questions. It explained that a consideration of the complainant's request that his land be included within the boundaries of Whitwell had been considered by council officers. It said that the land had been considered

as a potential site for development in the 2016 SHLAA, and that in planning terms, if the site had been considered an appropriate location for development then consideration would have been given as to whether it was appropriate to amend the village boundary to accommodate this. However the council had found no notes following a visit to determine its viability in Feb 2016 other than that evidenced in the final copy of the SHLAA. A link to this document was provided to the complainant.

18. The council said that it had asked relevant officers if they retained any notes or plans and they confirmed that they did not hold any. Further to this it had carried out searches (as detailed below) and had not found any further relevant information than that already provided to the complainant.
19. The council said that when the complainant submitted his subject access request various in-depth searches had been undertaken using a number of different search parameters: *"The Council undertook an automatic search in connection with various iterations of the Complainant's name and the property address [address redacted] on the Email Exchange Server and All Data Servers. It took 18 days continuous running (24 hrs per day) – which includes the Council's standard drives and Outlook"*. It confirmed that officers had then taken over 7 hours to manually sift through the documents and print off anything that was relevant.
20. Further to this council officers undertook a manual search in relevant structured filing systems in the council's planning 'Acolaid' system of its planning database, associated document management system and consultation software. Officers undertook searches of the planning database and consultation software and staff were asked to produce all written records. Therefore if there had been any other emails or notes relating to the complainant or his property/ land, then they would have been picked up by these in-depth searches.
21. The council confirmed that if information was held it would be held electronically. It said that information is not held on personal computers and is accessed and retained securely on the council's centralised facilities to comply with the council's Information Security Policy. Officers are not allowed to use removable media. Therefore the in-depth searches would have identified any relevant information.
22. The council said that there was no record of any information being deleted or destroyed. It also confirmed that its records management policy states that information of this sort should be retained permanently.

23. The council said that given the extent of the North Hertfordshire District and the Green Belt and settlement boundaries it would not expect every property or land ownership along every boundary to have a separate note/report or correspondence or justification for its position in relation to the boundary. It said that in strategic planning terms, this would be unreasonable and is not required by the National Planning Policy Framework (the NPPF). It said that its duty, as stated in the sixth bullet point of paragraph 85 of the NPPF, is to *'define boundaries clearly, using physical features that are readily recognisable and likely to be permanent'*. The council said that as regards its response to question 3:

"The proposed Green Belt boundary at Whitwell was established at the Preferred Options stage of the Plan that was approved by the Council in November 2014. Notwithstanding this, national policy requires Green Belt boundaries to be defined clearly using features that are readily recognisable and likely to be permanent (National Planning Policy Framework 'NPPF', paragraph 85). The SHLAA assessment above gave no reason to reconsider that boundary in advance of the proposed Submission Local Plan".

24. Further to this is pointed out that the site was visited on 9 February 2016, but no formal or informal notes were found relating to this other than the outcome which was presented in the SHLAA, which concluded *"Land to the west - which might allow for better integration of this site with the village - has not been promoted and development here in isolation would appear detached."*
25. The Commissioner understands the council's argument to be that although the complainant may believe that information will be held specifically in relation to his property and the decisions that were made when producing the updated boundary proposal, there is no specific requirement for it to consider every individual property in depth and the complainant is therefore incorrect in his assertion that further information must be held.
26. Further to this she understands council's argument to be that the explanation which was provided in the SHLAA as regards the potential for the development of the land weakened any argument for a reconsideration of the village boundary. The council said that doing so would have left the land as 'white land', where development would be supported in principle, contrary to the findings of the SHLAA which had suggested that any development would not be appropriate under the current circumstances.

27. The council has carried out searches which it considers would find any information that is held, asked the appropriate officers if they hold any further information and confirmed that no further information is held as regards this.
28. In coming to her conclusion, the Commissioner has considered what information she would expect the council to hold and whether there is any evidence that the information was ever held. In doing so the Commissioner has taken into account the responses provided by the council to the questions posed by her during the course of her investigation. The Commissioner is also mindful of the Tribunal decision in the decision in the *Bromley* case highlighted above.
29. Given the history of this case the Commissioner appreciates that the complainant may remain sceptical that further information does not exist. He had been informed by council officers that a consideration of including his land within the boundary of the village would be made, and he argues that only his land was highlighted to be included within the designated green belt. It appears however that the council's consideration of this issue was not specifically recorded other than via the paragraphs outlined within the SHLAA, a copy of which is already available to the complainant. Further to this it has explained why it has considered the property should be included within the green belt.
30. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further information relevant to this request. The council has carried out relevant searches, confirmed that its records management policy states that information of the relevant class should be retained on a permanent basis, and confirmed that no information has been deleted or destroyed. As regards the specific confirmation to the complainant that his land would be considered for inclusion within the village boundary the council has said that it has not found any information clarifying what consideration was given to this.
31. Taking all of the above into account the Commissioner is satisfied that on the balance of probabilities, no further information is held by the council. Accordingly, she does not consider that there is any evidence that the council failed to comply with Regulation 5(1) in relation to its response to the request.

Right of appeal

32. 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

33. 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.
34. 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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