

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 February 2019

Public Authority: Northumberland County Council
Address: County Hall
Morpeth
Northumberland
NE61 2EF

Decision (including any steps ordered)

1. The complainant has requested information sent from Northumberland County Council (the council) to Northumberland Estates. The council provided information it held but the complainant considered the council held more than that provided.
2. The Commissioner's decision is that the council does not hold any further information to what was provided in its initial response to the complainant and that the council breached regulation 11(4) of the EIR as its internal review was not carried out within the required 40 working days.
3. As the internal review has now been carried out and it has been found that no further information is held, the Commissioner does not require the council to take any steps.

Request and response

4. On 31 May 2018 the complainant requested the following information from the council:

"FOI/EIR request in relation to Planning Application 17/04143/FUL | Hybrid | Land North East of Windy Edge, Alnmouth Road, Alnwick, Northumberland

*We request copies of **any** communication (letter and email and retained notes, paper and electronic) from 14 November 2017 to 29 May 2018 **from Northumberland County Council to any individual employed by or acting for Northumberland Estates in relation to:***

- the proposed access via a widened Peter's Mill Lane (currently Bridleway number 5) to the housing development from Alnmouth Road;*
- any recommendations or requirements in relation to assessments of safety at the proposed junction with Alnmouth Road, traffic flow on the lane or Alnmouth Road, impact on pedestrians, impact on traffic elsewhere in Alnwick;*
- any actual assessments of safety at the proposed junction, traffic flow on the lane or Alnmouth Road, impact on pedestrians, impact on traffic elsewhere in Alnwick;*
- any recommendations or requirements in relation to the construction methodology or related assessments of the access road in the final 100metres to the junction with Alnwick Road.*
- any option appraisal or consideration of alternative access including any recommendation of or appraisal of permanent access via Denwick Lane;*
- any communications which link this application in any way to the Play Village application (18/00079/FUL).*

*It is our assumption that advice **to** Northumberland Estates, and those acting for Northumberland Estates, **from** Council officers should be available. Where other third parties are involved we accept that identifying details should be redacted.*

We draw your attention to communications from the ICO to Northumberland County Council and the findings of the internal review (ref EIR 3424) in relation to the previous requests (refs

3424; 3092) made about information prior to the submission of the planning application.

We therefore anticipate a prompt response to this request."

5. The council responded on the 21 June 2018 providing five attachments containing redacted emails.
6. The complainant requested an internal review on the 3 July 2018 as she considered there would be more information than that provided.
7. The council responded on the 17 July 2018 confirming that no further information is held.

Scope of the case

8. The complainant contacted the Commissioner on 1 August 2018 to complain about the council's response.
9. During the Commissioner's initial contact with the council about this complaint, the council then contacted the complainant further on the 12 September 2018 to advise that it will be conducting an internal review.
10. The council provided its review on the 28 September 2018 confirming no further information is held falling within the scope of the request.
11. The complainant again approached the Commissioner as she still considers further information is held and she is not satisfied with the time it took the council to carry out the internal review.
12. The Commissioner considers the scope of the case is to determine whether the council holds any further information falling within the scope of the request and whether it has breached regulation 11 of the EIR, with regards to the time it took to provide an internal review.

Reasons for decision

Regulation 5(1) of the EIR – Information held/ not held

13. Regulation 5(1) of the EIR states that:

"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."

14. Where there is some dispute between the amount of information identified 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 First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. The Commissioner must decide whether on the balance of probabilities the public authority holds any further information which falls within the scope of the request (or was held at the time of the request).
15. The Commissioner has therefore asked the council what searches it carried out to determine that no further information is held falling within the scope of the complainant's request.
16. The council has told the Commissioner that searches were carried out on staff email accounts, its electronic records and documents as well as paper notebooks as these are the locations where its Planning Services store its records.
17. The council has advised the Commissioner that it conducted electronic keyword searches which consisted of street names, relevant people's names and planning application numbers. Manual paper notepads were also checked for information falling into the scope of these keywords.
18. The council has explained to the Commissioner that as the request relates to a specific planning application, the Planning Service would be the most relevant team to contact in order to establish what information is held, and more specifically the Development Management and Highways Development Management Team. This included the Highways case officer for the scheme, reviewer of related transport assessment and the senior planning officer dealing with the planning applications.
19. The council has stated to the Commissioner that if further information were held, it would most likely be held in the form of electronic records, unless the case officer has used a notepad, then that would contain a small volume of manual records.
20. The council has confirmed to the Commissioner that no information relevant to the scope of the request was deleted or destroyed, there is no business purpose for which further information should be held and that all available statutory required information is available through its Public Access Portal.
21. It has also advised the Commissioner that the council does not voice record calls other than within its call centre. If manual records were made during a telephone conversation, this would be held by individual officers and all officers who held manual records have checked these in line with the request.

22. The council has also stated that based on the scope of the request and that the complainant has dealt directly with various officers within the planning department, the council would not expect the contact centre to hold any relevant voice records. If the complainant had called the contact centre, the council states that she would have been transferred to an appropriate officer within the planning services. Once the transfer was completed, the voice recording would end.

23. The complainant raised two points as to why she consider there may be more information held, she advised the Commissioner that:

- a) The report from Highways Development Management (1102560) dated 31 May 2018 states:

Comments were made on the original Transport Assessment submitted with the application in relation to additional information, clarifications and further assessment in relation to sustainable transport improvements and connections, references to the Road Safety Audit and the junction geometries used in relation to the modelling work undertaken.

The 'original Transport Assessment' was validated on 13 November 2017. The comments described above would therefore fall within our request period and relate directly to our request. We understand that discussions are likely to have been made by phone but we assume that any statement published in a formal report in May 2018 is based on emails or a written file.

- b) The five attachments (emails) provided as the only response to our request are dated: 22 December 2017, 23 March 2018, 3 April 2018, 18 May 2018, 25 May 2018. The first from a Highways Officer is dated 25 May 2018. It is of considerable surprise that an application acknowledged as complex by the Planning Department, and where the Pre application advice highlighted road safety issues, has generated only these email communications in a six month period and has generated no written records of communications by phone. We again request release of those records relevant to our request.

24. The council responded to the Commissioner on these two points stating that an email response from its highways officer was provided to the planning case officer on 8 January 2018, this being the initial planning consultation response, which included transport assessment matters. But the council could not find any evidence that this email response was forwarded to Northumberland Estates or any individual employed or acting on their behalf. This email therefore did not fall within the parameters of the request.

25. The Commissioner has also asked the council whether there is any other information held that is similar to that request and if so whether it has given any advice and assistance to the complainant in order to help them to refine their request in line with the duty contained in regulation 9 of the EIR.
26. The council responded to the Commissioner on this stating that as the requester gave a specific date range and was quite explicit in what she was requesting, the council only provided information falling within the scope of the request.
27. The council however, has confirmed that there is information held outside of the scope of the request. This further information falls outside of the timescale parameters given by the complainant (14 November 2017 to 29 May 2018).
28. The council also points out to the Commissioner that the complainant did not ask for 'information held' by the council, but specifically asked for any communication 'from' the council 'to' any individual employed by, or acting for, Northumberland Estates in relation to certain topics, which also limited the information falling within the scope of the request.
29. The council states that it highlighted this to the complainant in its internal review response and invited the complainant to make a new request with revised wording which would widen the scope of the request. The council has told the Commissioner that no further request was received, but it is happy to assist the complainant in making a revised request if she contacts them about it.
30. The council maintains that no further information is held that would fall within the scope of the request.
31. The Commissioner, on reviewing the above, is satisfied with the council's explanations on the searches it has carried out, the explanations it has provided to the Commissioner's enquiries and that it has contacted the most relevant departments in order to establish what information it holds.
32. She is also satisfied that the council has, in its internal review, alerted the complainant to the fact that information is held outside of the scope of the request.
33. On this basis, the Commissioner finds that on the balance of probabilities, the council does not hold any further information falling within the scope of the complainant's request and that the complainant would need to submit a new, refined request to the council should she want to pursue other information that is held by the council.

Regulation 11 of the EIR – Internal review

34. Regulation 11 of the EIR permits a complainant to make representations (request an internal review) following a public authority's response to an environmental information request.
35. Regulation 11(4) of the EIR requires public authorities to carry out the internal review no later than 40 working days from receiving it.
36. In this case the complainant requested an internal review on the 3 July 2018 and although it did respond on the 17 July 2018, the council has confirmed to the Commissioner that its formal internal review was the one carried out on the 28 September 2018.
37. This is outside the required 40 working days permitted by the EIR and therefore the Commissioner finds that the council breached regulation 11(4) of the EIR.
38. As the internal review has been carried out, the Commissioner does not require the council to take any steps.

Right of appeal

39. 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

40. 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.
41. 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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