

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 July 2019

Public Authority: Mid Devon District Council

Address: Phoenix House,
Phoenix Lane
Tiverton
EX16 6PP

Decision (including any steps ordered)

1. The complainant has requested information relating to proposed Cullompton Relief Road options. Mid Devon District Council initially withheld the requested information but subsequently disclosed information during an investigation by the Commissioner. The complainant has disputed the public authority's confirmation that all relevant held information has been provided.
2. The Commissioner's decision is that Mid Devon District Council has disclosed all the relevant information it holds and complied with regulation 5(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 17 September 2018, the complainant wrote to Mid Devon District Council (the "council") and requested information in the following terms:

"Please provide me with a copy of the evidence supplied to Homes England/DCLG of how the various proposed Cullompton Relief Road options are expected to achieve the primary objectives of the HIF Application process, namely, unlocking housing development."
5. The council responded on 28 September 2018. It stated that it was withholding the information under the exception for material which is still in the course of completion – regulation 12(4)(d).
6. Following an internal review the council wrote to the complainant on 26 October 2018. It stated that it was maintaining its position.

Scope of the case

7. On 11 June 2019 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. During the course of a previous complaint to the Commissioner submitted in relation to the same request, the council disclosed previously withheld information to the complainant. The Commissioner confirmed with the complainant that her new investigation would consider whether the council had disclosed all the relevant information it holds.

Reasons for decision

Regulation 5 - duty to provide environmental information

9. 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 of the request."
10. The complainant has disputed the council's confirmation that all relevant information has been disclosed.
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of

a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

12. In other words, in order to determine such complaints the ICO 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).
13. In order to assist with this determination the Commissioner approached the council with questions she routinely asks in such scenarios. The questions (in italics) and the council's responses are summarised below.
14. *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?*

The council explained that it knew information was held but due to it being such a narrow request and also date specific because the bid scheme changed entirely mid-way through the process an electronic search would not have focussed the query adequately. The council confirmed that the lead officer on this project had saved all submissions to Homes England/MHCLG in a specific electronic folder.

15. *Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.*

The council confirmed that several meetings were held with the Head of Planning, Economy and Regeneration who went through the relevant files held and checked each document to see if it was in scope, i.e., the correct town and the correct scheme (the council confirmed that there were two town bids and two different schemes for Cullompton).

16. *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.*

The council confirmed that this was not done on this occasion due to how specific the information required was. It explained that such a search brought up lots of information that was not in scope because 'evidence' as a search term would not have resulted in any matches (because it was not labelled that); alternatively a search on 'relief road' resulted in a tremendous number of documents. The council reiterated that the saved documents constituting all the submissions to Homes England/MHCLG in connection with the project were saved in one place and were systematically reviewed to see if they were in the scope of the request.

17. *If the information were held would it be held as manual or electronic records?*

The council confirmed that the information is held in electronic format.

18. *Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?*

The council confirmed that no relevant information had been deleted or destroyed.

19. *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?*

The council confirmed that it has an email policy which encourages management of employees' email accounts and retaining records which need to be kept on a shared drive. The council clarified that the information provided was from the shared drive.

20. *If the information is electronic data which has been deleted, might copies have been made and held in other locations?*

The council confirmed that the information would only be held on back-up files but no relevant information had been deleted in this case.

21. *Is there a business purpose for which the requested information should be held? If so what is this purpose?*

The council confirmed that there was a business purpose for retaining the information, namely, to support its bids submitted under the Housing Infrastructure Fund.

Conclusions

22. In determining the weighting of the balance of probabilities, the Commissioner has considered the searches conducted by the council, the purposes for which the information is held and its relative accessibility.
23. She notes that the information is needed to support the council's bids for infrastructure funding and that this work is led by a specific officer within the council. In view of this, the Commissioner considers it very likely that the officer in question would have accurate knowledge of the extent of information held and that they would be confident that the identified searches would locate and retrieve all relevant information.

24. The Commissioner is mindful that the complainant has genuine concerns that the council has not disclosed all the relevant information it holds, however, she has not been provided with any direct evidence that this is the case or otherwise been given grounds to disbelieve the council's position.
25. Having considered the relevant evidence, the Commissioner has concluded that, on the balance of probabilities, it is likely that the council has disclosed all the relevant information it holds and that it has complied with its duty under regulation 5(2).

Right of appeal

26. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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
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