

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 2 September 2022

**Public Authority:** Nuneaton and Bedworth Borough Council

**Address:** Town Hall  
Coton Road  
Nuneaton  
Warwickshire  
CV11 5AA

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Nuneaton and Bedworth Borough Council ("the Council") relating to Oaston Road Cemetery. The Council provided the complainant with information within the scope of the request. The complainant considers that the Council has not disclosed all the information it holds within the scope of their request.
2. The Commissioner's decision is that the Council has provided the complainant with all the information it holds within the scope of the request.
3. The Commissioner does not require the Council to take any steps.

## Request and response

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4. On 13 August 2021, the complainant wrote to the Council and requested information in the following terms:

"I am writing under the freedom of information act 2000 to request the following information.

1- I would like a copy of the plan of Oaston road cemetery showing the layout and allocation of the different areas.

2- I would like a copy of the minutes of the meeting at which it was decided to allocate the area formerly occupied by the old lodge ( and for which planning application for building houses was withdrawn following a campaign by people including myself ) as a Muslim only burial area.

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in section 12, please provide advice and assistance under the section 16 obligations of the act, as to how I can refine my request.

Thank you for your time and I look forward to your response."

5. The Council responded on 17 September 2021 and provided the complainant with some information within the scope of the request. Specifically, the Council provided the complainant with a copy of a partial plan of Oaston Road Cemetery.
6. On 19 September 2021 the complainant requested an internal review.
7. Following an internal review the Council wrote to the complainant on 22 October 2021. It stated that it had provided all the information it holds within the scope of the request.

## Scope of the case

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8. The complainant contacted the Commissioner on 14 October 2021 to complain about the way their request for information had been handled.
9. During the course of the Commissioner's investigation, the Council provided the complainant with a further response to their request in which they disclosed further information within the scope of the request. Specifically, the Council provided the complainant with a copy of a full plan of Oaston Road Cemetery.

10. Following receipt of the Council's further response to their request, the complainant wrote to the Commissioner to complain about the response and the Council's handling of their request.
11. The scope of this case and the following analysis is to determine if the Council is correct when it says that it has disclosed all the information it holds within the scope of the request.

## **Reasons for decision**

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### **Regulation 12(4)(a) – information held/not held**

12. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
13. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
14. 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 Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any or additional information which falls within the scope of the request (or was held at the time of the request).

### **The complainant's position**

16. In their complaint to the Commissioner, the complainant stated that they consider the Council to hold further information within the scope of their request which has not been disclosed.
17. The complainant considers that whilst the Council has provided them with a copy of the full plan of Oaston Road Cemetery, the plan does not show the layout and allocation of differed areas. Furthermore, the complainant explained that the copy of the plan they have received dates from before the old lodge was demolished. The complainant considers the Council to hold a more recent plan of the cemetery that dates from after the lodge was demolished.
18. The complainant also considers the Council to hold meeting minutes from the meeting where it was decided to allocate the area formerly

occupied by the old lodge as a Muslim burial area to be held by the Council.

### **The Council's position**

19. As is the practice in a case where there is some dispute over the amount of information located by a public authority and the amount of information that a complainant believes the public authority to hold, the Commissioner asked the Council to provide him with a detailed explanation of the searches it had conducted for information within the scope of the request.
20. With regards to the complainant's request for a copy of the plan of Oaston Road Cemetery showing the layout and allocation of different areas, in its submissions to the Commissioner, the Council explained that it has provided the complainant with a copy of the full plan of Oaston Road Cemetery. Whilst this plan dates from before the old lodge was demolished, the Council considers that plan does show where the Muslim plot is planned to be located. The plan shows the orientation of burial plots across the whole cemetery. In the area designated to Muslim burials, the orientation of the plots differs and this therefore, indicates that the area is for Muslim burials.
21. The Council stated that it does not hold a more recent plan of the cemetery from after the old lodge was demolished. It explained that it is currently in the process of renewing the cemetery plan and it anticipates that the new plan will to be completed by the end of 2023.
22. With regards to the complainant's request for the meeting minutes from the meeting where it was decided to allocate the area formerly occupied by the old lodge as a Muslim burial area, the Council explained that if it did hold meeting minutes from the meeting where it was decided to allocate the area formerly occupied by the old lodge as a Muslim burial area, the meeting minutes would be held electronically. The Council therefore, conducted a search of the network which contains information relating to the cemetery for the information using the following search terms:

Oaston Road minutes  
Cemetery minutes  
Cemetery meeting minutes  
New Section  
New Section minutes  
New Section Oaston Road  
Muslim burial  
Muslim burial section  
Muslim section minutes

This search did not result in any information within the scope of the request being located.

23. The Council explained that when it was conducting its search for meeting minutes from the meeting where it was decided to allocate the area formerly occupied by the old lodge as a Muslim burial area, it consulted the current Director of Public Services to ask them whether they held any information within the scope of the request. The Director of Public Services explained that whilst they are currently responsible for the management of cemeteries, when the decision was made to allocate the area formerly occupied by the old lodge as a Muslim burial area, they were not responsible for the management of cemeteries and therefore, they do not hold any information within the scope of the request.
24. The Council explained that it was unable to consult the individuals who were Cemetery Officer and Parks and Open Spaces Manager when the decision was made to allocate the area formerly occupied by the old lodge as a Muslim burial area as the individuals no longer work for the Council. Furthermore, as the individuals who were Cemetery Officer and Parks and Open Spaces Manager when the decision was made to allocate the area formerly occupied by the old lodge as a Muslim burial area no longer work for the Council, the Council was unable to search their emails as the emails have been deleted. The Council explained that a staff member's emails and email account are deleted the day after they leave the Council in line with the Council's retention policy.
25. The Council explained that it was also unable to search the emails of the elected Councillor who was the portfolio holder for the cemeteries department when the decision was made to allocate the area formerly occupied by the old lodge as a Muslim burial area as their emails have been deleted as the Councillor is no longer elected.
26. The Council considers that the meeting minutes from the meeting where it was decided to allocate the area formerly occupied by the old lodge as a Muslim burial area would not be held within the email accounts of any other Council employees as the former Councillor who was portfolio holder for the cemeteries department, the former Cemetery officer and former Parks and Open Spaces Manager were the only individuals who attended the meeting.

### **The Commissioner's position**

27. The Commissioner has considered the Council's position in relation to whether the Council holds further information within the scope of the request.

28. The Commissioner is satisfied that the Council has carried out adequate searches for information within the scope of the request. Therefore, his decision is that on the balance of probabilities, the Council does not hold any further information within the scope of the request and so the exception provided by regulation 12(4)(a) is engaged.

**Regulation 12(1)(b) – the public interest test**

29. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exceptions set out under regulation 12 of the EIR.
30. However, as no further information has been found to be held, the Commissioner can only find that the public interest in maintaining the exemption at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no further information to disclose.

## 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**