

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

### **Decision notice**

**Date:** 6 September 2022

**Public Authority:** North Northamptonshire Council  
**Address:** Deene House  
New Post Office Square  
Corby  
Northants  
NN17 1GD

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

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1. The complainant has requested information from North Northants Council ("the Council") in relation to a specific planning application. The Council has refused to provide the requested information, citing regulation 6(1)(b) of the EIR, as the information is available publicly online. It has also cited regulation 12(4)(e) - internal communications and regulation 13 - personal data.
2. The Commissioner's decision is that the Council has correctly cited regulation 6(1)(b). However, upon consideration of the case, the Commissioner considers that the Council should not have relied upon regulation 12(4)(e) or regulation 13. This is because this information does not fall within the scope of the complainant's request. The Commissioner will also look at the timeliness of the Council's response, under regulation 5(2) - time for compliance.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

### **Request and response**

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4. On 25 October 2021, the complainant wrote to the Council and requested information in the following terms:

- “Under the freedom of information act, I require all the information that has led to the granting of planning permission for the building in the rear garden of [address redacted], application Ref No [redacted].”
5. The Council responded on 25 November 2021. It refused to provide the requested information, citing section 21 of FOIA – information accessible by other means, and provided a link to the information.
  6. Following an internal review the Council wrote to the complainant on 21 December 2021. It stated that it maintained its original position, however, it also provided some information in the form of redacted emails, and an enforcement note, which do not fall within the scope of the request, but it was being provided for the sake of transparency.
  7. The complainant contacted the Council on 22 December 2021, advising that they believed that two named members of staff would have made reports and that they wanted them to be provided, along with the redactions being removed from the emails provided. A further request for information was also made. However, the Commissioner is only investigating the request detailed above.
  8. The Council responded to this correspondence on 30 December 2021. It advised that it had checked with the named members of staff, who advised no further information is held. The Council also explained that the redactions would remain as they were due to personal data.
  9. During the Commissioner’s investigation, he wrote to the Council and advised that he considers that the request should have been responded to under the EIR, as it related to planning matters.
  10. The Council has agreed that the request should have been handled under planning matters and, therefore, it is applying regulation 6(1)(b), and regulation 13 – personal data. The Council also explained to the Commissioner that it is applying regulation 12(4)(e) to one redacted email, as they consider it to be internal communications.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 17 January 2021, to complain about the way their request for information had been handled.
12. During the Commissioner’s investigation, he determined that some of the exceptions applied related to information that has been provided outside the scope of the complainant’s original request. As such, the Commissioner will only be making a determination on the response/information in relation to the original request. Therefore, the

Commissioner considers that the scope of this request is to determine if the Council was correct to apply regulation 6(1)(b) to the request.

## **Reasons for decision**

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### **Regulation 5(1) – duty to make environmental information available**

Is the requested information environmental?

13. Regulation 2(1) of the EIR defines environmental information as being information on:

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;

14. The Commissioner considers that, as the requested information is for planning applications, it falls under regulation 2(1)(c), due to the information relating to plans likely to affect the element and factors referred to in 2(1)(a). The Commissioner therefore considers that the request should be dealt with under the EIR.

### **Regulation 6(1)(b) – publicly available and easily accessible**

15. Regulation 6(1) of the EIR states that:

“Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

- (a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format.”

16. The Council has explained that the relevant link to the requested information has been provided to the complainant and that it believes the complainant can access it, as the complainant makes contact with the Council via electronic means and has also advised the Council that the information available online, is not the information they have requested.
17. The Council has explained to the Commissioner that all planning files are routinely published on the planning portal and that all documents and information which supported the decision for the relevant planning application have been published.
18. The Council has also explained that, for the sake of transparency, it provided the complainant with a copy of an enforcement notice, along with a bundle of emails between officers, which was provided as part of the internal review. Whilst the emails were in relation to the application, they did not form or support any decision in relation to the planning application. The Council also advised that the redactions made to these emails were due to personal data.

#### The Commissioner's view

19. The Commissioner considers that the information is publicly available and easily accessible within the meaning of the EIR.
20. The EIR place an obligation upon public authorities, but they also provide public authorities with some protection. Where environmental information has already been made available, public authorities can shield themselves from some of the burden of responding to requests – either because would-be requesters have already found the information for themselves or because the public authority can, when a request has been made, simply point to the information already available. Therefore Regulation 6(1)(b) exists in part to protect public authorities from having to re-provide the same information continually – it also acts as an extra incentive for public authorities to make the environmental information available in the first place.
21. From the information provided, the Commissioner is satisfied that the information that relates to the granting of the planning permission is available online for the complainant to access. The information that the Council provided to the complainant does not fall within the scope of the original request and, therefore, if the complainant wishes to dispute the redactions further, they will need to make a separate request to the Council.

**Regulation 5(2) – time for compliance**

22. Regulation 5(2) of the EIR states that:

“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.”

23. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR. The Commissioner’s decision is that the Council has breached regulation 5(2) by failing to respond to the request within 20 working days. However, as the Council has since provided a response, no further action is necessary.

## Right of appeal

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24. 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)

25. 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.
26. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**