

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

### **Decision notice**

**Date:** 15 December 2022

**Public Authority:** Planning Inspectorate  
**Address:** Eagle Wing  
Temple Quay House  
2 The Square  
Bristol BS1 6PN

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

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1. The complainant has requested communications between the Planning Inspectorate ("the PI") and South Hams District Council ("SHDC") relating to a planning appeal. The PI provided information that fell within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the PI does not hold any further information that has not already been disclosed.
3. The Commissioner does not require the public authority to take any further steps.

#### **Request and response**

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4. The complainant requested information in the following terms:

"I would like to make a Freedom of Information request in relation to the above case.

I am aware that South Hams District Council challenged the process to be used in this appeal and threatened the Planning Inspectorate with a judicial review (E-mail from [name redacted] dated 8th December 2020). I would like to see copies of all communications between the Planning Inspectorate and South Hams District Council (and any representatives of the Council including elected members) relating to this case and copies of any specific instructions given to the Planning Inspector [name redacted]."

5. The PI responded providing the documentation that fell within the scope of the complainant's request. Following an internal review the PI confirmed that it did not hold any further information that has not already been disclosed.

## **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way their request for information had been handled. The complainant's main concern surrounded the question why there appeared to be no response from the PI to the email from [name redacted] of 8 December 2020.
7. In their internal review request the complainant was of the view that the information they had received (an email of 15 December 2020 that had copied in a Councillor of SHDC), indicated other potential communication between the PI and that Councillor. They believed that these communications may not be held in the form of emails, but rather held as file notes or records of telephone conversations. The complainant was also of the view that there must have been communications with the inspector, as he would not possibly know what to do if there were no communications or instructions. On this basis the complainant expanded their request to include contemporaneous records, file notes, records of telephone conversations etc.
8. The Commissioner has considered whether the PI has identified and provided all the requested information it holds.

## **Reasons for decision**

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### **Appropriate legislation**

9. Regulation 2(1) of the EIR sets out the definition of environmental information. As the request is for information relating to specified planning applications, the Commissioner considers that the requested information falls within the definition of environmental information at regulation 2(c).

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

10. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
11. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, makes a decision

based on the civil standard of the balance of probabilities. In other words, to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any further information which falls within the scope of the request (or was held at the time of the request).

### **The PI's position**

12. The PI provided further submissions to the Commissioner. The PI admits that there were mistakes made following receipt of the complainant's information request. It stated that the Customer Team Officer who handled the original request was not in the position to know that the complainant had all the correspondence he had asked for. However subsequent relevant correspondence that could be found on the PI's electronic records system was disclosed. In addition, the officer had also failed to conduct further checks with the appeal case officer for any correspondence that may be held but has not been uploaded to the system. The PI says that these checks were conducted after the complainant had queried why certain emails appeared to be missing from the disclosure.
13. The PI has explained that these further checks revealed missing information that the case officer had failed to upload to the system and were subsequently disclosed to the complainant. In respect of the email of 8 December 2020, the PI admits that it is not unusual for the complainant to expect to see a reply from the PI, given the information contained in that email.
14. The PI has said that following the complainant's internal review request, additional checks were conducted by the case officer, their manager and the Inspector who decided the complainant's appeal. However, it says that these did not reveal any further communications between the PI and the Councillor.
15. It also says that an inspectorate-wide search was carried out by its IT specialists to identify any email communications at all between the PI and the Councillor. The PI says it has checked each of the small number of emails identified and there are only two that relate to the complainant's appeal. The PI says that the two emails have already been disclosed to the complainant. It asserts that the Councillor was copied into both emails, however there was no direct communication with the PI. It also confirms that no additional communications between the PI and the Councillor that relates to the complainant's appeal were identified by any of the searches conducted.
16. The PI clarified that the most likely explanation why the Councillor was copied into the email of 15 December 2020 was because the Councillor was also copied into the email of 8 December 2020. It admits that this

was not necessary and has only caused further confusion. Although it explained that the Councillor is an elected representative and would have been entitled to see all such communications.

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

17. The Commissioner is satisfied with the explanation provided by the PI that there is no further information held that falls within the scope of the complainant's request. While the Commissioner understands why the complainant believes that the PI may not have disclosed all communication with the Councillor (partly due to the way their request was handled), the Commissioner considers that the PI have carried out reasonable searches to identify all the relevant information that it holds. The Commissioner considers that the information falling within the scope of the complainant's request as revealed by those searches has been duly disclosed to the complainant.
18. The Commissioner has considered the searches performed by the PI, the information provided, the PI's explanations as to why there is no further information held and the complainant's concerns.
19. On the balance of probabilities, the Commissioner considers that the PI does not hold any further information to that already provided and so the exception provided by regulation 12(4)(a) is engaged.
20. As no information within the scope of the request is 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 information to disclose.

### **Other Matters**

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21. It is not sufficient for a public authority to state that the information requested is not held. Instead, the authority must issue a refusal notice under regulation 14 and cite regulation 12(4)(a) as the relevant exception.

## Right of appeal

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22. 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)

23. 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.
24. 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 .....**

**Esi Mensah**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**