

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 October 2023

Public Authority: Bath and North East Somerset Council
Guildhall
High Street
Bath
BA1 5AW

Decision

1. The complainant asked for a copy of a noise report and correspondence between named individuals regarding the report. During the Commissioner's investigation, Bath and North East Somerset Council (the Council) published the noise report. Regarding the requested correspondence, it has disclosed information, but withheld other information under the exception for third party personal information.
2. The complainant is unhappy about the time taken by the Council to provide an internal review. They also consider that further correspondence is held in scope of the request.
3. The Commissioner's decision is that, on the balance of probabilities, the Council holds no further information in scope of the request. However, he finds that the Council breached regulation 11(4) of the EIR as it did not provide its internal review outcome within 40 working days; and breached regulation 5(2) in respect of an email chain that was disclosed late, during the Commissioner's investigation.
4. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

5. The complainant made the following information request to the Council on 25 January 2023:

“I now request under the Freedom of information Act that I be sent an electronic copy of the noise report document.

I further request that I be sent any correspondence (emails etc.) concerning the noise report between (name redacted) of Matrix and (name redacted) and (name redacted) of B&NES Authority. Plus, any correspondence concerning the above report between (name redacted) and (name redacted) with 4Concrete.”
6. The Council refused to disclose the report, citing regulations 12(4)(d) and 12(5)(f) of the EIR (the exceptions for ‘material still in the course of completion’ and ‘the interests of the person who provided the information’, respectively). However, it did disclose correspondence in scope of the request, subject to redactions for third party personal information.
7. It said that some of the requested correspondence was not held.
8. The complainant set out their grounds for internal review to the Council, who provided a review on 8 June 2023 after the Commissioner’s intervention. The Council upheld its application of regulations 12(4)(d) and 12(5)(f) but disclosed a further email chain, subject to redactions under regulation 13 of the EIR (personal information).

Scope of the case

9. The complainant first contacted the Commissioner on 15 April 2023 to complain about the way their request for information had been handled.
10. Their initial complaint was that the Council had not responded to their request for an internal review.
11. In the period since the complainant raised their complaint with the Commissioner, the Council has published the noise report in question and has disclosed further correspondence in scope of the request, subject to redactions under regulation 13.
12. The complainant has said that: “I would hope that you would give a ruling that signifies that the authority should have released a copy of the

draft report to me following my February FOI 2023 request. I would like confirmation that the reliance on the original exceptions cited was not an acceptable reason for refusing my FOI request and that the public interest should have taken precedence.”

13. The complainant also considers that the Council holds further correspondence in scope of the request.
14. The Commissioner emphasises to the complainant that he will not issue a decision regarding the Council’s previous application of regulations 12(4)(d) and 12(5)(f) to information that has now been disclosed. This would not be an appropriate use of the Commissioner’s limited resources.
15. The Commissioner therefore considers that the scope of this case is to decide whether the Council holds further correspondence in scope of the request. He will also consider any procedural matters he needs to address.

Reasons for decision

Is any further information held?

16. The complainant has raised a number of points during the Commissioner’s investigation and believes that the Council should hold further information with regard to the correspondence between the Council and the third parties involved in the process.

17. The complainant said:

“... there is a lack of any correspondence between [the Council] and Matrix about the conditions agreed for further noise testing. There was a requirement for a barrier gate to be closed and for jack hammering to be carried out behind a shed during noise testing. None of this detail is revealed in the emails I received ...” This is important information which I require to monitor the way the 4Concrete operates in the future.”“I am not certain that my request for all email correspondence between Matrix and officers after the draft Matrix report was submitted in December has now been produced. It is also in a heavily redacted format. This could be regarded as a deliberate error on their part to avoid disclosing to me how they handled the dialogue between officers and Matrix in setting about procedures to facilitate the Additional Noise testing by Matrix.” And “I am also convinced that I have not received all the correspondence between authority officers and Matrix. I know that following the December 2022 Draft Report submission to Officers

Matrix requested additional monitoring. The conditions for this monitoring i.e. monitoring of jack hammering behind one of the buildings and cement lorry loading with the main gate shut. There is no email thread for this change in methodology.”

18. During the Commissioner’s investigation a number of key questions¹ were raised about the searches carried out by the Council in order to locate all of the information in scope of the request.
19. The Council confirmed that: “Both named officers carried out searches of all files and emails related to this matter when the original request was received. Searches for all information within the scope of the request was carried out in both the electronic folders related to this matter and search terms were used to locate information held in the email accounts of both of the named officers.” And “Search terms included “Matrix,” “4Concrete”, “(name redacted)” (Matrix), “(name redacted)” (4 Concrete). The Environmental Protection property database was searched for information held within the scope of the request.” Further searches have taken place and in order to assist one further document has been located, which has now been disclosed.
20. As noted above, the Council confirmed that appropriate searches and search terms were used in order to locate relevant information in scope of the request.
21. There is no requirement for the Council to create information in order to answer the requester’s questions, their obligation is to supply information they held at the time of the request.
22. From the information provided by the Council to the requester and the Commissioner, the Commissioner is satisfied that, on the balance of probabilities, the Council holds no further information in scope of the request.

Procedural matters

23. Regulation 11(4) of the EIR (representations and reconsideration) provides that a public authority shall notify a requester of the outcome
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¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/key-questions-for-public-authorities-eir-2004/#5-1>

of its internal review as soon as possible and no later than 40 working days after receiving an internal review request.

24. In this case, the complainant requested an internal review on 26 February 2023. The Council did not provide its internal review until 8 June 2023, over three months later.
25. The Commissioner therefore finds a breach of regulation 11(4) of the EIR.
26. He also finds a breach of regulation 5(2) in respect of the additional email chain that the Council disclosed more than 20 working days after receiving the request.

Right of appeal

27. 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

28. 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.
29. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF