

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **8 December 2023**

Public Authority: **Arun District Council**
Address: **Arun Civic Centre**
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Decision (including any steps ordered)

1. The complainant requested information from Arun District Council (“the Council”) about a planning application. The Council initially withheld the requested information. However, shortly after the Commissioner accepted this case for investigation the Council disclosed the information it had previously withheld. During the course of the Commissioner’s investigation the Council twice disclosed further information it had identified as being within the scope of the request. The Council’s position is that it has now disclosed all of the information it holds within the scope of the request. The complainant believes the Council holds further information within the scope of the request, beyond that which it has disclosed.
2. The Commissioner’s decision is that, on the balance of probabilities, the Council does not hold any further information within the scope of the request.
3. The Commissioner does not require the Council to take further steps.

Request and response

4. On 26 April 2023, the complainant wrote to the Council and requested information in the following terms:

“There has been a meeting at the Arun District Council Offices between the Planning Office and the representatives of a combination of the Developer Lovell, West Sussex County Council, and the Architects Allford Hall Monaghan Morris which Lovells say took place in August 2022.

This was making use of the pre-app service for a pre-planning meeting regarding a possible development to the fields South of Elm’s Farm, adjacent to Ancton Lane, Middleton-on-Sea. The proposal was for 87no. dwellings and 219no. bedrooms.

I would request to see all the pre-application feedback and the file notes that the planning officer/s, who took the meeting, have provided the applicant, together with all the relevant papers which will include all the advice given.

This should include all the references to their assessments of how the development could comply with planning policies.”

5. The Council responded on 16 May 2023. It refused to provide the requested information citing regulation 12(5)(d) of the EIR (confidentiality of the proceedings of the authority) as its basis for doing so.
6. The complainant requested an internal review on 18 May 2023.
7. Following an internal review the Council wrote to the complainant on 13 June 2023. It maintained its reliance on regulation 12(5)(d), but also cited regulation 12(5)(f) (interests of the person providing the information) as an additional basis for withholding the information.

Scope of the case

8. Shortly after the Commissioner accepted this case for investigation the Council disclosed the information it had previously withheld. During the course of the Commissioner’s investigation the Council twice disclosed further information it had identified as being within the scope of the request. The Council’s position is that it has now disclosed all of the information it holds within the scope of the request, other than a small amount of personal data that it has redacted. The complainant believes

the Council holds further information within the scope of the request, beyond that which it has disclosed. The complainant does not wish to complain about the redaction of personal data.

9. The scope of this case is therefore to consider whether the Council holds further information within the scope of the request, beyond that which it has now disclosed (and the redacted personal data).

Reasons for decision

Regulation 5(1) – duty to make environmental information available on request

10. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
11. Where there is some dispute between the amount of information identified 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 decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any further information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
12. In this case the Council disclosed the information it initially identified as within scope of the request, and had previously withheld, on 30 August 2023. It subsequently disclosed some further information on 4 October 2023, the Council identified this information when dealing with an internal review for another similar request made by a different requestor. The Council also carried out additional searches as a result of the Commissioner contacting it about this case, this identified one further email within scope of the request, which had been missed in previous searches. This has now been disclosed to the complainant.
13. The complainant has stated that in addition to the information that has been disclosed, they believe the Council holds further information within the scope of the request in the form of emails, letters and minutes of meetings.
14. During the course of his investigation the Commissioner asked the Council to provide details of the searches it had carried out to identify any further information held within the scope of the request.

15. The Council confirmed that it had consulted with the relevant members of the planning team, who stated that any further information held would be within Outlook. The Information Governance Manager met with the relevant Team Leader in order to verify all of the necessary searches have taken place, that all the relevant individuals involved have been consulted and to review the searches made to ensure that all possible locations have been covered.
16. The Council stated that it had used the following search terms when carrying out its searches:
 - "file reference number "PAA/91/22/"
 - "pre-app"
 - address of site in various forms - "land south of Ancton Lane", "Ancton Lane", "Middleton"
 - names of people representing the person who submitted the pre app and company names involved e.g. Quod, employees of Quod names
 - general search by date of emails held for when the FOI relates
 - names of officers who would have had an input in to the writing or issuing of the pre-app."
17. The Council confirmed it has searched electronic diaries, as well as emails.
18. The Commissioner is satisfied that the Council has carried out appropriate searches and staff consultations designed to identify any further information held within the scope of the request. As no information was identified, his decision is therefore that, on the balance of probabilities, the Council does not hold any further information within the scope of the request.

Other matters

19. Although the Commissioner is satisfied that, on the balance of probabilities, the Council has now disclosed all of the information it holds within the scope of the request in this case, it is of concern that the Council's initial searches did not identify all of the information within the scope of this request. In this case this led to the complainant receiving the information they had requested in three batches. The Council should ensure when dealing with future requests that it carries out appropriate

searches designed to identify all information within the scope of the request when initially dealing with the request, ensuring that the information is disclosed, or a refusal notice issued, within the statutory period.

Right of appeal

20. 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

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

21. 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.
22. 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

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