

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 26 September 2012

Public Authority: Tenterden Town Council
Address: Town Hall
24 High Street
Tenterden
Kent
TN30 6AN

Decision (including any steps ordered)

1. The complainant requested information from Tenterden Town Council relating to the "Tenterden Southern Extension". The council provided some information however it sought to withhold information using various exemptions under the Freedom of Information Act 2000 ("the FOIA"). Following the Commissioner's intervention, the council reconsidered the request under the Environmental Information Regulations 2004 ("the EIR") and relied upon exceptions under the EIR. During the course of the investigation, the council decided to make the information available to the complainant. The only outstanding issue was the way the council had handled the request.
2. The Commissioner's decision is that the council breached regulations 5(1), 5(2), 14(2), 14(3), 14(5), 11(4) and 9(1) of the EIR.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 3 September 2011, the complainant requested information from the council in the following terms:

"I request all information held by Tenterden TC and its councillors regarding the proposed Tenterden Southern Extension including but not exclusively, all info relating to the 4 July 2011 Special Finance and

General Purposes Committee meeting. The minutes of that meeting mention continued liaison with the relevant parties. Please provide all info held regarding those parties and the liaison activities undertaken including copies of any written records. Also provide copies of the Town Council's correspondence with [name] in connection with the Southern Extension as well as written record(s) of the meeting referred to in those minutes between the consortium and Ashford Borough Council. If that has not yet taken place but has been scheduled please let me know the date and have any related papers eg. Agenda etc.

Also provide a copy of [name's] article regarding the new housing in Teterden and how, under the new Localism Bill, planning and development will change and how it would affect Tenterden".

5. The council responded on 5 September 2011 and provided a copy of the article referred to in the last part of the request, although it said that this was already public information. It added that some information about Tenterden Southern Extension was already publicly available on the council's website. The council refused to provide any further information and it cited a number of exemptions under the FOIA.
6. The complainant requested an internal review of the way her request was handled on 6 September 2011.
7. There followed an exchange of correspondence in which the council appeared to delay conducting an internal review because it was formulating a new procedure. The council also informed the complainant that it was not entirely clear what information was required.
8. The complainant replied to the council on 12 October 2011 and said the following:

"To clarify matters, I wish to receive, in line with the Freedom of Information Act and my request of 3 September, all of the information the Council holds (not a brief summary as you suggest) from the setting up of the first round of 'village' workshops to the present including policy discussions, minutes, correspondence, details of the consultation process, how attendees to the workshops for Teterden were selected, details of the wider public consultation process and outcomes, and all subsequent Town Council activities regarding the Tenterden Southern Extension to date".

9. The council responded on 2 November 2011 and said that it had compiled a fuller response and information was ready to collect from its offices. It said that it had withheld some information using the same exemptions already cited in its response on 5 September 2011.

10. The council sent a further response on 17 January 2012. It said that it had decided that it had handled the matter appropriately and no further action would be taken.
11. During the Commissioner's investigation, the council reviewed the request and disclosed more information. It sought to rely on the exceptions under regulation 13(1) and regulation 12(5)(b) under the EIR to withhold some information.
12. To save resources, the council and the complainant reached an informal agreement at this stage that the council would allow the complainant to inspect the remaining withheld information at its offices.

Scope of the case

13. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider the following issues:
 - Whether the council had correctly withheld information and
 - Procedural breaches that arose as a result of the way in which the council handled the request.
14. It was not necessary to consider whether any of the exceptions had been correctly applied by the council because the council decided to make this information available to the complainant thereby informally resolving that part of the complaint.

Reasons for decision

Is the information environmental?

15. The council handled the request under the terms of the FOIA. However, the Commissioner considers that it was wrong to do so. Information that meets the definition of "environmental information" provided by regulation 2 of the EIR cannot be considered under the FOIA. According to regulation 2(1)(c) of the EIR, environmental information will include any information relating to activities or plans affecting or likely to affect the elements of the environment, one of which is the land. Tenterden Southern Extension is a development that will affect the land. Information relating to that plan will fall within the scope of the EIR.

Procedural issues

16. The council failed to provide all the information it was able to provide under the EIR within 20 working days and by the date of its internal review. It therefore breached regulation 5(1) and 5(2) of the EIR.
17. Under the EIR, when an authority wishes to refuse to provide recorded information, it must cite the exception in question and provide full rationale. As the council failed to issue a valid refusal notice relating to this request within 20 working days, it breached regulation 14(2) of the EIR.
18. The council failed to explain adequately why the information was excepted under the EIR, including full public interest test considerations where relevant, by the date of its internal review and this was a breach of regulation 14(3).
19. The council failed to inform the complainant that there is a right of appeal to the Information Commissioner. This was a breach of regulation 14(5) of the EIR.
20. Under the EIR, a public authority has 40 working days to undertake an internal review. The council completed its internal review outside the statutory time frame. This was a breach of regulation 11(4) of the EIR.
21. The complainant alleged that the council had breached the obligation under regulation 9 to provide reasonable advice and assistance. The complainant was not sure of the extent of the information held by the council and therefore phrased her request broadly. The council informed the complainant that it believed her request was too general and it sought guidance on whether she could be more specific about the information required. Unfortunately, the council made those enquiries after it had responded to the request and received a complaint from the complainant. It offered limited assistance, at a late stage, to advise the complainant about the nature of the records held. The Commissioner agrees that the council breached regulation 9.

Other matters

22. The complainant expressed concern about the way the council handled her request and the subsequent complaint to the Commissioner. The Commissioner shares those concerns. The Commissioner has noted a number of specific procedural failings above.
23. The Commissioner also continued to encounter significant problems during his investigation when seeking adequate explanations to justify

the decision to withhold information and copies of all the information being withheld. These problems caused significant delays to the progress of the Commissioner's investigation.

24. The way the request was handled may indicate that there are issues relating to training or resources or both that the council needs to address. The Commissioner would like to highlight that there is a significant amount of guidance available to public authorities on his website at www.ico.gov.uk to help them to understand their obligations under the legislation. The Commissioner would recommend that the council considers this guidance to help it to improve its request handling in the future. For ease of reference, the guidance can be accessed via the following link:

http://www.ico.gov.uk/for_organisations.aspx

Right of appeal

25. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. 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.
27. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
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