

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

Decision notice

Date: 9 June 2021

Public Authority: Causeway Coast & Glens Borough Council
Address: Cloonavin
66 Portstewart Road
Coleraine
BT52 1EY

Decision (including any steps ordered)

1. The complainant requested from Causeway Coast & Glens Borough Council ("the Council") information relating to a planning application reference LA01/2018/0134/F. The Council provided the complainant with some information relating to his request, and confirmed that these are the only minutes that the Planning Department hold. The Council stated that it does not hold any other information (minutes of meetings or a draft report) which relates to the request.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold any further recorded information within the scope of the request. She is therefore satisfied that the Council complied with its duty under regulation 5(1) of the EIR by virtue of the exception at regulation 12(4)(a) (information not held).
3. However, the Commissioner finds that the Council did not comply with its obligation under regulation 5(2) (time limits for compliance) of the EIR as the Council did not provide the additional information within the statutory time limit of 20 working days. Furthermore, the Council also failed to provide its internal review response within 40 working days, the Commissioner therefore finds that the Council breached regulation 11(4) of the EIR.
4. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

5. On 13 February 2020 the complainant wrote to the Council and requested information in the following terms:

"I am writing to you under the Freedom of Information Act 2000 to request the following information from Causeway Coast and Glens Planning Department.

I request all minutes over the last 24 months from the monthly group internal planning meetings. That contain information about:

- *Planning Application LA01/2018/0134/F*
- *[address redacted]*
- *[address redacted]*
- *[name redacted] (Architect)*
- *[address redacted] - (also labeled on file)*
- *[address redacted] - (also labeled on file)*
- *[name redacted]*

I request a log of those who have viewed and accessed the Working file – particularly before the correct redaction of my personal data took place. This is to establish if it was put at risk. I request the information in an electronic file format, sent as an email attachment with receipt confirmed by myself.*

It has been claimed that this information is held with the Working File. This has been checked and found to be inaccurate.

** Receipt confirmation requested due to Numerous known evidenced failures of Council's IT Systems."*

6. On 24 February 2020 the Council responded and dealt with the request under the EIR as it considered the information related to planning control. The Council stated that the Planning Department does hold information within the scope of the request. It provided the complainant with a copy of the minutes of the internal group meeting held on 12 June 2018, and confirmed that these are the only minutes that the Planning Department hold relating to his request.
7. On 25 February 2020 the complainant asked the Council for an internal review.

8. On 19 June 2020 the Council provided its internal review response and stated that the decision cannot be changed. It clarified that the application had to be submitted to the Planning Committee for their consideration and approval. The Council explained that it could not be considered by Planning Officials due to the number of objections raised to this planning application. Therefore, the Council said, "*a draft incomplete case officer report was never finalised or placed on file.*"
9. With regard to the complainant's other issues raised and which he considered to be inaccurate findings, the Council stated that they were being progressed separately and a response would be issued.

Scope of the case

10. The complainant contacted the Commissioner on 19 June 2020 to complain about the way his request for information had been handled. Specifically, with regard to some documents within the planning application file, which the complainant considers to be missing from the information the Council had provided to him.
11. The complainant also raised concerns regarding the time taken for the Council to complete an internal review, and also about the Council's handling of his information request.
12. The following analysis focuses on whether the Council holds any further recorded information relating to the request, and whether the Council complied with the procedural aspects of the EIR.

Reasons for decision

Regulation 2 – Is the requested information environmental?

13. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA.
14. Regulation 2(1)(c) of the EIR defines environmental information as any information on "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 (2)(1)(a) and (b) as well as measures or activities designed to protect those elements."

15. The request in this case is for information relating to planning matters. The Commissioner is satisfied that the requested information is therefore on a measure that would or would be likely to affect the elements listed in regulation 2(1)(a) and is, therefore, environmental under regulation 2(1)(c).

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

16. Regulation 5(1) of the EIR states that “*a public authority that holds environmental information shall make it available on request.*” This is subject to any exceptions that may apply.

Regulation 5(2) – time limits for compliance

17. Regulation 5(2) of the EIR requires this information to be provided to the requester within 20 working days following receipt of the request.
18. The request for information was submitted on 13 February 2020 and the Council responded on 24 February 2020. However, the Council’s response did not include the additional information which it located, this was subsequently disclosed to the complainant on 25 June 2020 which falls outside of the 20 working days.
19. The Council therefore breached the statutory timeframe under regulation 5(2) of the EIR.

Regulation 12(4)(a) – information held/not held

20. Regulation 12(4)(a) of the EIR provides 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.
21. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant’s evidence and arguments. She will also consider the actions taken by the authority to check that the information was not held, and any other reasons offered by the public authority which is relevant to her determination. She will also consider any reason why it is inherently likely or unlikely that the requested information was not held.

22. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities. This is in line with the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities.
23. It is also important to note that the Commissioner's remit is not to determine whether information should be held, but only whether, on the balance of probabilities, the requested information was held by the Council at the date of the request.

The complainant's position

24. The complainant confirmed that the Council had provided him with one set of minutes for a meeting (a report). However, he argued that the Council had not produced "*the minutes of a group meeting with the architect and telephone minutes highlighting the fact that items would be discussed at a 'group meeting'.*" The complainant considered that this information should have also been disclosed at the time of his request, and he believes that there is a file of missing documents which relates to his request.
25. The complainant also strongly believes that a report had been prepared for the meeting concerning the planning application, and that there must be minutes for this, therefore, he is of the view that this information is held by the Council but that it has been withheld. Within the complainant's correspondence to the Commissioner, he outlined what he considers to be missing from the information requested. This included the following:
- "*4th March 2020 - 58 pages found missing (not issued until 25th June)*
 - "*20th March 2020 - 4 missing documents issued*
 - "*13th August 2020 - 1 missing document (Pre-application discussion call minutes added to file)*
 - "*25th August 2020 - 1 missing document issued*"

26. The complainant argued that the above 64 missing pages shows that the internal review or searches "*were not conducted properly.*" He expressed his concern of the "*missing report*" and believes that the Council had used excuses regarding its information tracking system ("CITOS") and he said that this does not "*reflect information held in other documents.*" The complainant stated to the Commissioner a number of his concerns, which included in his view, that there had been a "*failure of proper searches*" and "*information withheld for a great length of time*"
27. The complainant also expressed to the Commissioner his opinion on the "*accuracy and the honesty of the Planning Department/Causeway Coast and Glens.*" He asked for reasons of "*why notes, files, reports are being hidden or worse, deleted and can we take what they have written in letters to be correct.*"

The Council's position

28. The Council was asked by the Commissioner to provide its response to the request regarding *all minutes over the last 24 months from the monthly group internal planning meetings.*" The Council explained that the complainant was provided with a copy of the original case officer's report dated 12 June 2018, and that this is a report which had been signed by both the case officer and the senior officer agreeing the assessment and the recommendation of the application. The Council said "*this is considered minutes of the discussion.*"
29. The Council also stated that "*In the absence of a report, discussions at group meetings were previously not minuted as the final assessment of the application had not been reached at that time. These group meetings are an opportunity to discuss the proposal between the case officer and a senior officer and to seek guidance.*"
30. The Council advised that from 4 March 2020, any internal discussions that take place between the case officer and an authorised officer regarding the assessment of an application, are now recorded in the application file. It said that this was not custom and practice prior to this date nor on the date of the complainant's request. The Council provided the Commissioner with a copy of the guidance which it issues to its staff about this procedure on recording information.

31. With regard to the report that the complainant considered had not been provided to him, the Council explained to the Commissioner that the Planning Department have two different types of case officer reports that are used depending on whether the application is a delegated or a committee application. To illustrate the different types of applications, the Council provided the Commissioner with a copy of the "Scheme of Delegation" document, and also an explanation of the differences.
32. In this instance, and in short, the Council said that a Planning Committee Report was subsequently prepared outside of central paragraphs of the NIPP (Northern Ireland Planning Portal), by the case officer and agreed by the senior officer. The Council said that *"When complete, certain paragraphs are selected to be printed and this then becomes the report. A meeting takes place between the case officer and senior planner to agree and sign off the report. This is then considered as minutes of the discussion."*
33. The Council also confirmed that the complainant is aware of this report and that it is available to view on the public access section of the Planning Portal. A copy of this report was provided to the Commissioner by the Council.
34. The Commissioner asked the Council a series of questions to determine whether any further recorded information was held. This included questions about the searches the Council conducted to locate the requested information and she asked for details about the possible deletion or destruction of information which might be relevant to the complainant's request. The Commissioner also asked the Council to provide any general explanations or arguments as to why it should not be expected to hold information relating to the request.
35. The Council stated the minutes that the Council held were released to the complainant. It said that initially, a search of the hard copy planning application file was undertaken for a copy of minutes. Following this, the relevant staff were asked to undertake a search of any records they held. In response, the Senior Planning Officer (SPO) that attended the meeting, confirmed that there were no records held, and that the meeting was not minuted. The Council said that the SPO further advised that the application had changed from a delegated application to a committee application and a committee report would be produced in due course.
36. The Council said that a search of electronic data was not conducted, as following discussions with the SPO, they advised that minutes of group discussions were not minuted.

37. If the information was held, the Council stated that it would have been a manual record contained within the hard copy application file.
38. The Council confirmed that the complainant received a copy of the original officer's report of June 2018, and that there was no information held relevant to the scope of his request in relation to the second officer's assessment under delegated authority. This, the Council added, is because this was produced as a planning committee report, and that the planning committee report was not produced until after the complainant's information request. The Council also stated no second delegated officer report was produced.
39. The Council confirmed that it does not have a record of the document's destruction as the Council did not hold the information requested. It provided the Commissioner with a link to the Council's Retention and Disposal Schedule which states that all Development Management application files are to be retained for six years after closure. If the Council had held the requested information, it could not have been disposed of for six years after closure which would not be until after 27 August 2026.
40. The Council said that there is no business purpose to hold requested information. The relevant information i.e. planning committee report, is held for business purposes. As of 4 March 2020, records of decision-making meetings are now being recorded and retained in the application file. The Council also confirmed that there are no statutory requirements upon the Council to retain the requested information.
41. The Commissioner asked the Council to state the parts of the request which information was provided. It confirmed that the complainant was provided with a signed copy of the original case officer's report dated 12 June 2018. This report, it said, was also signed and agreed by the SPO. The Council reiterated its explanation as of paragraph 29 of this notice, and stated that the report provided to the complainant was the only report available at the time of his request.
42. The Commissioner also asked the Council whether it holds a copy of the incomplete case officer report. The Council explained that it holds electronic data that is incorporated into the planning committee report, and said *"This data is contained within central paragraphs of the NIPP and as previously explained (paragraph 26 of this notice) not all paragraphs will be printed to produce a report. A case officer's report or a planning committee report is considered to be a record of agreement between the case officer and the authorised officer of the assessment of an application."*

43. A further explanation by the Council reveals that in this instance, the case officer's delegated officer report was not completed as of 14 November 2019, as further letters of representation were received. This meant that the planning application was required to be determined by the Planning Committee. A planning committee report was then prepared by the case officer and agreed by the SPO.
44. The Council said that a committee report is not prepared using central paragraphs, it is prepared outside of the NIPP. However, the Council continued, relevant text within central paragraphs would be copied and updated in relation to the planning committee report.
45. With regard to the complainant's issues raised, the Commissioner asked the Council to consider the points and to state whether or not the matters were resolved. It said that the complainant was provided with an explanation in the internal review response and within the Council's response, it also provided the Commissioner with a copy of these as supporting evidence. The Council confirmed that the other issues raised in the complainant's correspondence had been dealt with on 25 June 2020 and on 19 August 2020.
46. The Council summarised that at the time of the request, it did not record any discussions/group meeting and that the Council does not hold any other information which the complainant has requested i.e. any minutes of meeting or a draft report. The Council reiterated that following guidance issued to staff on 4 March 2020, minutes of these types of meeting have only been recorded on the application file. It said that an explanation had been provided regarding the report that the complainant considers has not been released to him.

The Commissioner's view

47. The Commissioner has examined the submissions of both parties. She considered the searches conducted by the Council, its explanations as to why information was not held and also the complainant's concerns.
48. The Commissioner acknowledges that the requested information is clearly of interest to the complainant, and the complainant considers that this information should be held.
49. However, the Commissioner is satisfied that the Council carried out adequate and appropriately-targeted searches in response to the request, which would have been likely to retrieve information if it was held. She notes that all the relevant officers were consulted and reasonable searches undertaken. The Commissioner considers that such searches would have located all relevant information.

50. The Commissioner recognises that the complainant is unconvinced that the discussions regarding the planning application was not minuted and recorded. The Commissioner accepts that it was entirely reasonable for the complainant to expect the Council to hold the information (minutes of the group meeting with the architect) at the date of the request. However, there is no evidence to demonstrate that these minutes exist. Therefore, in the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the Council's position that it does not hold any further relevant information beyond the information already provided to the complainant.
51. The Commissioner notes that the Council has updated its procedure to ensure that such meetings are now minuted. As stated in paragraph 30 of this notice, the Commissioner was provided with evidence showing the Council's procedure on recording information.
52. To date, the Commissioner notes that correspondence with the complainant is still ongoing and requests for information are still being submitted to the Council along with queries regarding the planning application. The Commissioner acknowledges the planning application was granted planning permission on 27 August 2020.
53. The Commissioner is satisfied that on the balance of probabilities, the Council does not hold any further information falling within the scope of the request to that which it subsequently identified and disclosed to the complainant. The Commissioner considers that the Council has complied with the requirements of regulation 5(1) of the EIR and that regulation 12(4)(a) is engaged.

Procedural matters

54. The complainant raised his concern to the Commissioner about the Council's handling of his request.
55. Regulation 11 of the EIR states that:

"(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.."

(3) The public authority shall on receipt of the representations and free of charge—

(a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations."

56. In this case, the complainant requested an internal review on 25 February 2020 and the Council responded on 19 June 2020. The Council's response took 80 working days, therefore, the Commissioner finds that the Council breached regulation 11(4) of the EIR as it did not provide a response within the time limit.

Other matters

57. During the Commissioner's investigation, the complainant raised a number of concerns relating to the conduct and integrity of the Council during the handling of his request. This included his belief that information had been deleted, proper searches had not been carried out and documents were missing.
58. The complainant considered that these matters should have been included in the scope of his complaint. In his initial complaint to the Commissioner, the complainant's focus was that a report existed which had not been provided to him; documents were missing; and the time it had taken for the Council to respond to his request. The Commissioner has addressed those issues above.
59. With regard to the further issues raised, the public information leaflet '*your right to know*' provides sufficient information for members of the public to be able to complain or appeal about a response to a request for information. The purpose of an internal review is for a public authority to re-consider its response and provide an opportunity to amend its position if necessary, or disclose further information. It is not necessary to have a step-by-step process in place.
60. The role of the Commissioner is to consider whether a public authority has complied with the legislation she oversees, in that it has provided information where applicable, within the appropriate timescale. Where it has not done so, she will consider whether a relevant exemption or exception has been correctly applied.
61. Despite the complainant's assertion that information may have been deleted, the Commissioner has not seen evidence of such activity taking place.

62. The complainant also referred the Commissioner to the Council's response to an information request which he submitted on 5 March 2021. The Commissioner cannot consider this as it is a subsequent request, and it will be dealt with as a separate case in due course.

Right of appeal

63. 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

64. 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.
65. 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

Phillip Angell
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