

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 February 2022

Public Authority: Arun District Council
Address: Maltravers Road
Littlehampton
BN17 5LF

Decision (including any steps ordered)

1. The complainant has requested information held by Arun District Council (the council) relating to a particular planning application. The Commissioner's decision is that the council has provided the complainant with all the information it holds that is relevant to the first part of his request
2. However, as the council failed to provide this information within 20 working days, the Commissioner has found there to be a breach of regulation 5(2) of the EIR.
3. In relation to part 2 of the request, the Commissioner is satisfied that, on the balance of probabilities, the council holds no further information falling within the scope of this part of the request that is not the complainant's own personal data.
4. The Commissioner does not require the council to take any steps as a result of this decision notice.

Background

5. The complainant submitted a planning application to the council for permission to remove a number of limbs from a particular tree; he had explained that the tree canopy was overhanging both his, and his neighbour's, garden. The tree in question appears to be situated beyond the end of the complainant's garden, within the grounds of a large private estate.

6. The council refused to grant the complainant planning permission to reduce the size of the tree.
7. The council has published details of the planning application, and the decision which was reached, on its website. This information included details of an objection to the application which was submitted by Arundel Town Council.

Request and response

8. On 3 October 2020, the complainant wrote to council and requested information in the following terms:

'Furthermore in a letter, dated 24th August 2020, from [council officer name redacted] ADC, addressed to [name redacted] Clerk to Arundel Town Council, she is thanked for her internet representation registering ATC's objection, OWPC29166, made on 21st August 2020.

This communication has not been placed on Arun District Council's web site, planning application section, together with all other listed documents. In your letter of the 24th August 2020 it is confirmed that the council Planning Services operate an 'open file' policy and will publish ATC comments on the ADC's website. You have not done so.

I request that you please furnish me with a copy of this representation and any other undeclared documentation, in order that we may establish the reasons of that objection.'

9. On 19 October 2020, the council advised the complainant that the information he had requested was available on its website (and provided him with a link). However, the complainant responded on the same day to ask that the council carry out a 'thorough review' of its handling of his request.
10. On 21 October 2020, the council provided its internal review response to the complainant. The council confirmed that Arundel Town Council had submitted its comments electronically via the council's website, and therefore no other information from 21 August 2020 – such as a letter – was held.
11. However, the council did provide the complainant with a copy of its acknowledgement letter to Arundel Town Council of 24 August 2020, which contained a direct quote of the comments that had been received. It further quoted Arundel Town Council's comments in its internal review response letter.

12. On 23 October 2020, the council then sent a further letter to the complainant which included details about his request. It would appear that this letter was in response to certain queries the complainant had raised on 19 October 2020. The council now advised the complainant that there had been a misunderstanding with regard to the information he required, and it went on to provide further details about the objection which it had received from Arundel Town Council.
13. On 10 December 2020, the council wrote to the complainant in response to a recent email which he had sent (date unknown) where he asked again for information held about the planning application. He once again made specific reference to requiring a copy of the 'internet communication' which the council had received from Arun District Council on 21 August 2020.
14. In its response, the council provided the complainant with further explanations about Arundel Town Council's consideration of the planning application, and how its objection had been processed by the council's IT system upon receipt. The council also provided the complainant with copies of some information, including a screen shot of the comments it had received from Arundel Town Council, as held on its IT system.

Scope of the case

15. The complainant initially contacted the Commissioner on 10 November 2020, to raise concerns about the way his request for information had been handled by the council.
16. He complained that the council had failed to provide him with all the information that he had requested, and that it had also failed to provide a response to his internal review request of 27 October 2020.
17. The Commissioner contacted the council on 3 February 2021, requesting that it now conduct an internal review, as required by the EIR.
18. However, the Commissioner, having considered the copies of correspondence that he has since received from the council, is of the opinion that on 21 October 2020, the council did provide the complainant with its internal review response.
19. For the purposes of this decision notice the Commissioner is to consider the complainant's correspondence of 3 October 2020, as a request for recorded information. His view is that an objective reading of the scope of this request is that it was for:

- A request for a copy of the objection which was submitted to the council by Arundel Town Council
 - A request for any other information about the planning application which is not already published on the council's website.
20. It is the Commissioner's view that part 2 of the request would also capture information held that is the complainant's personal data, and this is examined further in the 'Other Matters' section at the end of this decision notice.
21. The Commissioner is to investigate whether the council has provided the complainant with a full copy of the objection it received from Arundel Town Council in response to part 1 of his request.
22. In addition, the Commissioner will conduct an analysis as to whether, on the balance of probabilities, there is any further information held that is relevant to part 2 of the request which has not been disclosed previously and which is not the personal data of the complainant.

Reasons for decision

Regulation 5(1) - Duty to make environmental information available on request

23. 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.
24. 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. He will also consider the actions taken by the public authority to establish what information within the scope of the request it held, and any other reasons offered to explain why further information is not held. He will also consider any reason why it is inherently likely, or unlikely, that further information is not held.
25. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
26. With regards to part 1 of the complainant's request of 3 October 2020, it would appear that there may have been some misunderstanding by the council about what the complainant required. However, it is the

Commissioner's view that the complainant clearly stated that he required a copy of the original objection, and the council failed to provide this to him (in the form of a screenshot) until 10 December 2020.

27. As the council has now provided the complainant with a copy of the objection in the format in which it was received, the Commissioner does not require the council to take any steps with regard to part 1 of the complainant's request.
28. The Commissioner has gone on to consider whether, on the balance of probabilities, the council holds any additional information relevant to part 2 of the complainant's request that is not the complainant's own personal data.
29. Following the council's correspondence to the complainant of 10 December 2020, and his response of the same date, the council states that it had believed the matter to be concluded.
30. However, the complainant has advised the Commissioner that the information which has been provided to him is not sufficient; he states that it does not explain whose advice Arundel Town Council acted upon, and, in any event, the details within the screenshot were not relevant to the tree application. The complainant has argued that it was clear that a site inspection had not been carried out, and that Arundel Town Council was acting upon unclear and false information.
31. The council is only required to provide recorded information which is held in response to an information request; it is not required to create information in order to answer questions or queries.
32. It is apparent that the complainant does not accept the outcome of the planning application; within his correspondence to the council about his information request, he persistently raises questions about the validity of the processes which were followed, the timing of the objection received, and the decision which was made.
33. It is apparent from the complainant's representations that his primary concern is that his planning application was refused, and he believes that this was not a fair decision. However, the EIR is not intended to be a mechanism for individuals to use to 'interrogate' a public authority about a decision that has been made, or to obtain further justification for that decision; there are separate legal channels which provide an individual with the opportunity to raise any matters of concern they may have.
34. The Commissioner is aware of no evidence which would indicate that there is any further information held by the council that is relevant to

part 2 of the complainant's request, in addition to that which has already been made available, and which is not the complainant's own personal data.

35. The Commissioner is therefore satisfied that, on the balance of probabilities, the council has provided the complainant with all the information that is held that is relevant to all the parts of the complainant's request and that is not the complainant's own personal data.

Procedural matters

Regulation 5(2) – time for compliance

36. Regulation 5(2) of the EIR states that information should be made available as soon as possible, and within 20 working days of receipt of the request.
37. As the council only provided the complainant with a copy of the original objection which it received from Arundel Town Council on 10 December 2020, the Commissioner has found the council to have breached regulation 5(2) of the EIR.

Other matters

Regulation 5(3) – personal data of the complainant

38. Whilst Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available upon request, regulation 5(3) states that, to the extent that the information requested includes personal data of which the applicant is the data subject, paragraph 5(1) shall not apply to that personal data.
39. It is the Commissioner's view that part 2 of the complainant's request would capture material which is the personal data of the complainant. Such information, if held, would be exempt under regulation 5(3) of the EIR.
40. It is unclear whether the council does hold any personal information about the complainant that would fall within the scope of part 2 of this request. Furthermore, the Commissioner cannot require a public authority to take action under the Data Protection Act 2018 via an EIR decision notice.

41. However, the Commissioner regards it to be appropriate to recommend to the council that it review the second part of the complainant's request, and then issue a new response in order to comply with its data protection obligations.

The council's engagement with the Commissioner

42. The Commissioner has found it necessary to record within this decision notice his concerns about the way in which the council has responded to his enquiries in this case.
43. Whilst the council initially engaged with the Commissioner, and provided copies of its communications with the complainant, it did not provide a direct response to the questions he had asked about how it had handled the complainant's request. It then subsequently failed to make any contact in response to the Commissioner's chaser letters.
44. In this case, after careful consideration, the Commissioner concluded that he was able to reach a decision based on all the information available to him; therefore an information notice was not required. However, it is essential that the council improves its engagement with the Commissioner.
45. A record has been made of the poor engagement that the Commissioner received from the council in the latter stages of this investigation. This matter may be revisited should similar poor engagement be experienced by the Commissioner in any future cases relating to this council.

Right of appeal

46. 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

47. 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.
48. 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

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