Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **16 January 2012**

Public Authority: **Babergh District Council**
Address: **Council Offices**
Corks lane
Ipswich
Suffolk
IP7 6SJ

Decision (including any steps ordered)

1. The complainant has requested to view a file and a pre-application documentation relating to a planning application. The council allowed the complainant to view the relevant file however the complainant subsequently found that documents which he considered important to his case had not been included within it at the time that he viewed and copied documents from the file. The council also failed to include the information on a CD ROM which it subsequently sent to the complainant. It did however disclose this to him after further the complainant wrote again requesting the information.

2. The Commissioner's decision is that Babergh District Council has breached the EIR in that it did not provide the complainant with access to all of the relevant information within 20 working days of receiving his request for information.

3. However the Commissioner does not require the council to take any steps as the council subsequently provided the information to the complainant.

Request and response

4. On 11 June 2011 and 15 June 2011 the complainant wrote to Babergh District Council and requested information in the following terms:

> *"I would now further request via freedom of information, copies of the file marked "confidential", which I have already seen in the working file ([name of property redacted]), as it was apparently put in it in error. In this file, [name redacted] has a written transcript of the advice given to my wife and I in a meeting between [name redacted], [name redacted], my wife and I. He has also written down details of his further conversations with [name redacted].*
>
> *I would therefore formally request sight of the entire file including all comments made on the application process throughout, both typed and hand written. As I say, I have already seen much of this, but not been able to get copies as when I asked for them I was told it shouldn't have been in the file."*

And

> *"I also request sight of any e mails between [name redacted] and [name redacted] relating to the [name of property redacted] application, both pre-dating my last FOI request and subsequently.*
>
> *In short, I require a fully open transparent sharing of all documentation from October to now, as it relates to the [name of property redacted] application.*
>
> *I further require information as to how many meetings occurred between [name redacted], [name redacted] and [name redacted] over the period between October 2010 and now, that in any way discussed the [name of property redacted] application. If there are any written notes relating to these meetings, I would require these also.*

5. The council responded on 1 July 2011. It stated that Regulation 12(5)(f) applied (the exception for information provided on a voluntary basis) however it decided that the public interest rested in disclosing the information for this request and therefore allowed the complainant to view the files. For the other sections of the request it stated simply that "the planning file and the pre-application file are up to date". By this it

meant that the complainant could go to the council's offices and view the file in it entirety.

6. The complainant asked the council to review its decision on 29 June 2011. His complaint related to missing information from the information which he had been allowed to view. This included minutes of a meeting held on 18 May 2011 together with other information which he specified. He also asked for a CD ROM of the entire working file.

7. This information was subsequently provided to him after the complainant requested the information again.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The basis of his complaint was the following:

> *"1. A failure to comply fully with an FOI request by incompletely disclosing information requested*
>
> *2 A second failure to completely disclose based on a second FOI request relating to the same planning application*
>
> *3. A failure to make any attempt to offer to send me the information. Instead, I was required to drive make a 90 minute return journey to the council offices to photocopy the file myself. The final response to my FOI merely stated "the file is complete", with no offer to send the file as a CD ROM, photocopy the file or send me a copy in the post. I regard this as distinctly unhelpful and poor.*
>
> *The basis of my complaint on the first point is enclosed in the file enclosed marked "FOI complaint" (31.7.11). In it I highlight the chronology of the breach of duty to fully disclose the file marked "confidential" containing the minutes of a meeting between myself and the Planning Officers."*

9. The Commissioner is satisfied that the information which was requested is environmental information. The council was therefore correct to consider the request under the provisions of the EIR rather than the Act. The information relates to a planning application requesting approval to make physical changes to the outside of a property. It therefore falls within the definition of environmental information provided in Regulation 2 of the EIR.

10. The Commissioner notes that although the council did not provide the complainant with all of the information from the file in the first instance, it did subsequently did provide him with the information after he had asked for it a number of times. The council has therefore disclosed the requested information to the complainant. He does not intend to look into this aspect further therefore.

11. However the disclosure of the information to the complainant was not within the 20 days required under Regulation 5(2).

Reasons for decision

12. Regulation 5(2) states that

> *"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."*

13. The Commissioner notes that the date of the initial request was the 11 June 2011 and 15 June 2011. The council finally disclosed the information to the complainant on or around 5 August 2011.

14. The council did not rely on an exemption as regards the missing information. It therefore should have supplied the information to the complainant within 20 working days as required by Regulation 5(2).

15. The Commissioner's decision is therefore that the council breached Regulation 5(2).

Other matters

16. The Commissioner notes that the complainant raised a number of issues regarding the council's response to his requests which do not fall within the scope of his investigation under section 50 of the Act. These are provided in points 2 & 3 above.

<u>The missing information</u>

17. The complainant stated that information which was important to his case was not provided to him in response to his requests.

- He states that an email was missing from the file when it was provided to him in response to his first request. The council subsequently provided this, stating that this had been an oversight when copying the file for the CD ROM.

- The complainant also highlighted that information was missing from the council's response to his second request. This included a copy of minutes which he had specifically asked for.

18. The complainant argues that the missing documents were of vital importance to his arguments. He said that, taking into consideration the history of events and the importance of the information to his arguments his impression was that the information was deliberately omitted.

19. On both occasions the information was subsequently provided to him. As regards the missing information from the file he pointed out to the council that he was aware that further information existed because he had seen it on his first visit to view the file. At that time the council had taken this away before he could copy it. It stated that it should not have been held in that particular file in the first instance.

20. Regulation 19 makes it an offence to deliberately conceal information in response to a request. The Commissioner's decision is however that there are no grounds to consider that there was a deliberate attempt to withhold or conceal the information in question because it was subsequently provided to him.

21. As regards the other information which was not within the file which was provided to him the Commissioner notes that the information was held in a working file, and the council states that this was subject to amendment as time went by and officers worked from the file. The Commissioner also notes that the information was subsequently disclosed to the complainant and so he does not need to consider whether the information was withheld under any exemption.

The format of disclosure

22. The complainant argues that the manner of the council's disclosure to him was flawed. He argued that the council did not offer to provide him with copies of the information. It merely stated that the file was complete and gave him details as to how he could view the files in the council's offices. He said that this resulted in a number of journeys of approx 90 minutes in order to view the files.

23. Regulation 6(1) states that where an applicant requests that the information be made available in a particular form or format, a public authority shall make it available in that form unless it is reasonable for it to provide the information in another form.

24. The complainant's initial requests asked for 'sight' of the information in question rather than for a copy of it. He stated that "*I am now exercising my right to view all pre application correspondence"* and also

"I now request sight of the entire working file". The council would not therefore have breached the Act or the Regulations by informing the complainant that he could go to its offices to view the files as this was in accordance with his requests to view or have sight of the information

25. Even where the complainant subsequently stated that he would like copies of the information it was unclear whether this was a request for copies to be sent to him or whether he was stating that he would like to take copies himself. Bearing in mind his previous visits, it could also have been construed as him asking to take copies of the information when he next viewed the files at the council.

26. As the complainant did not express a clear preference and did not make a direct complaint about being told to go to the council offices in the first instance the council would not have breached the Act by again offering the complainant the opportunity to visit its offices to view the files. It was also open to the complainant to contact the council and explain that he wished copies of the information sent to him if he was unhappy with the situation.

27. A breach of the Regulations would only have occurred in this instance if the complainant had specifically requested that copies of the information were sent to him and the council refused to do so when it was not reasonable for it to do that. The Commissioner notes however that the council did subsequently provide the complainant with the information in the form of a CD ROM when it was asked to do so.

28. The Commissioner does not therefore consider that the council breached Regulation 6 when it responded to the complainant in this respect.

Right of appeal

29. 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

30. 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.

31. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF