

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

Decision notice

Date: 27 February 2012

Public Authority: Mid Suffolk District Council
Address: 131 High Street
Needham Market
Ipswich
Suffolk
IP6 8DL

Decision (including any steps ordered)

1. The complainant requested information relating to planning decision notices. The council provided all the information that it held. The complainant was not satisfied that this was the case.
2. The Commissioner's decision is that, on the balance of probabilities, the council has provided all the recorded information that it held.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 28 January 2011, the complainant requested information from Mid Suffolk District Council ("the council") in the following terms:
"On this subject I would like copies of the correspondence between MSDC [the council] and NKSP [Nicholas King Special Projects Ltd] relating to the exchanges of the notices please".
5. A further email was sent on 30 January 2011 asking for information in the following terms:
"Both the applicant and the Council were fully aware of the goings on with these notices and presumably reached some form of agreement to

this highly unusual procedure to the benefit of both parties.

Could you please forward the correspondence between NKSP and/or its agents and the council in this respect."

6. The council responded on 18 February 2011 and provided copies of the relevant correspondence.
7. On 21 February 2011, the complainant requested an internal review because he did not accept that he had been provided with all the information held falling within the scope of his request.
8. The council completed its internal review on 13 April 2011. It maintained that it had provided all the information it held.
9. Following an initial complaint to the ICO, a decision notice was issued on 19 October 2011 (case reference FS50390240) which asked the council to reconsider the request under the terms of the EIR.
10. The council complied with the decision notice and said that it wished to maintain that no further information was held and cited regulation 12(4)(a).
11. The complainant wrote to the council on 20 October 2011, 10 and 11 November 2011 and continued to allege that he had not been provided with all of the relevant information held.
12. On 18 November 2011, the council completed an internal review and said that it wished to maintain its position.
13. The Commissioner notes that the complainant continued to send correspondence to the council alleging that further information was held.

Scope of the case

14. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council had provided the information that it held.

Reasons for decision

Regulation 5(1) – Duty to provide environmental information

15. Regulation 5(1) of the EIR provides a general right of access to environmental information held by public authorities.
16. 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 why the complainant believes further information was held. The Commissioner will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held “on the balance of probabilities”.¹
17. The complainant made various allegations in a series of exchanges with the council. In an attempt to achieve greater focus to the concerns expressed, the Commissioner discussed the outstanding issues with the complainant. The complainant indicated that his outstanding concerns were as follows:
 - The council had failed to provide a copy of a letter dated 30 January 2009 from the developer to the council. The complainant believes that this letter would have been on the subject of amending the first planning notice.
 - The council had failed to provide any recorded information demonstrating how and when the various planning decision notices were issued. The complainant considers that it is unlikely that the council would have kept no record of this given that the notices were formal legal documents.
18. The council explained to the Commissioner that in response to the concerns raised by the complainant, the Head of Performance and Audit Services and various other staff members at the council had undertaken thorough searches which involved reviewing the information held manually and electronically by the council’s planning department. The council had also reviewed information held on the council’s complaints system. These searches had confirmed that there

¹ This approach is supported by the Information Tribunal’s findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

was no further information that had not already been made available to the complainant.

19. As well as the above, the council also addressed the specific concerns raised by the complainant. On the subject of the letter referred to, the council said that it accepted that it would have held the letter prior to the request but it was not held at the time of the request. The council said that it is unfortunately the case that the letter was missing and the council could not account for what had happened to the letter. The council conceded that, on this occasion, its records management had been poor. The council said that it believes that the letter has either been misfiled or mislaid. It said there is no evidence to indicate that it was deleted or destroyed.
20. In relation to records of when and how the notices were sent, the Commissioner would observe that the scope of the request is limited to copies of the actual correspondence between the relevant parties. Copies of any relevant correspondence may or may not indicate how and when the notices were sent, for example, if the notice was sent as an attachment to an email. If the notice was sent by post without a covering letter, the council may hold a separate record to state that was the case but that would not be covered by the scope of the request made by the complainant in this case, and therefore falls outside the scope of the Commissioner's investigation.
21. Notwithstanding the limits of the Commissioner's investigation in this case, the council clarified that its standard practice is to send out planning notices by first class post. It is not normal practice to enclose a covering letter. The council said that its computer system records the details of when the notice was printed and also, at the time of the request, when the notice was published on line. The council said that it does not record when postage has take place and notices form part of the normal outgoing post bag. The council referred to amendments made to the planning notes and it said that the corrections were not deemed to be so significant as to require detailed records to be kept. It said there was no evidence to indicate that any relevant recorded information had been deleted, destroyed or mislaid.
22. Based on all the above, the Commissioner accepts that on the balance of probabilities, the council has supplied all the recorded information that it held falling within the scope of the request.

Other Matters

23. Given the matters discussed above regarding records management on this occasion, the Commissioner considers that the council would benefit from referring to the recommendations set out in the Code of Practice under section 46 regarding best practice in records management. For ease of reference, the Code can be accessed here:

<http://www.justice.gov.uk/downloads/guidance/freedom-and-rights/foi-section-46-code-of-practice.pdf>
24. The council has told the Commissioner that it has already reminded its officers of the important of placing documents on the relevant file when received. The Commissioner trusts that the council will make appropriate improvements in this area in the future.

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
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Wycliffe House
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