

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

Decision notice

Date: 23 October 2012

Public Authority: Milton Keynes Council
Address: Civic Offices
PO BOX 111
Saxon Gate East
Central Milton Keynes
MK3 3HN

Decision (including any steps ordered)

1. The complainant requested information from Milton Keynes Council ("the council") relating to the handling of a previous request for information. The complainant asked for all the emails that the council had determined were not relevant to the previous request following an email restoration from a backup system. The council supplied the information requested but the complainant disputed that he has been provided with all the information.
2. The Commissioner's decision is that, on the balance of probabilities, the council has provided all the information held falling within the scope of the request.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 7 June 2011, the complainant requested information from the council in the following terms:

"We refer to the information you provided to us on 14 June 2010 in relation to our November 2008 FOIA 2000/EIR 2004 information request (ICO ref. FER0234572) – copy of your cover letter attached for your convenience.

You will see (we have sidelined the relevant section on p.2 of the 14 June 2010 letter) that you told us that, of 63 emails from [name]'s email account you had retrieved/restored for 2008, and which contained the relevant keywords, only 9 were considered by you to be "relevant" (and were thus provided to us).

Under the above legislation we therefore now request that you provide us with the 54 emails (ie minus 9) which you had at that time considered non-relevant".

5. The council replied on 1 July 2011 and said that it had enclosed the requested information.
6. The complainant replied on 28 July 2011 and expressed dissatisfaction with the response. He alleged that the council had not provided all the information that it had referred to in its letter of 14 June 2010.
7. The council replied on 9 September 2011 and said that it believed it had provided all the information relating to the request and it would not therefore be entering into any further correspondence.
8. The complainant replied on 21 September 2011 and continued to express concern with the council's response. As a result, the council agreed to conduct an internal review.
9. The council completed its internal review on 5 January 2012 and said that it wished to maintain its position that it had provided the information that had been requested.

Scope of the case

10. 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 supplied the information falling within the scope of his request.

Reasons for decision

Regulation 5(1) – Has the council provided the information requested?

11. Regulation 5(1) of the EIR provides a general right of access to environmental information held by public authorities. 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 argument. He will also consider the actions taken by the authority to check that it has identified all the information that was held and he will consider if the authority is able to explain why no further information was 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

12. This case relates to a previous request for information and the searches that were conducted by the council to obtain information relating to that request from backup tapes. A complaint about the handling of the previous request was considered by the Commissioner and he issued a formal decision notice on 29 November 2010 under case reference FER0234572. For ease of reference, that decision can be accessed here:

http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fer_0234572.ashx

13. In relation to part of the previous request referred to above, the council wrote to the complainant on 14 June 2010 and said the following:

"To retrieve any e-mails from [name]'s account the council has had to go to an external company in part due to an upgrade of our e-mail servers, the external company restored the e-mail server and retrieved the e-mail account for [name]."

Key word search used; Windfarm; wind farm; Petsoe; turbine; 06/01349/fuleis. The results were:

Pst archive = 56

August 08 recovered = 7, therefore a total of 63 e-mails were found.

The emails were reviewed for relevance and those which were not relevant were removed, this therefore left 9 e-mails none of which were exempt which have been revealed to you".

14. The complainant has asked the council to provide the information that it considered was not relevant following the key word search referred to. The council said that it has provided this information however the

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

complainant does not accept that this is the case. In his initial expression of dissatisfaction on 28 July 2011, the complainant alleged that the council had "padded out" the bundle of emails it had provided to make it add up to the required number using emails that did not fall within the scope of the request. The complainant explained that he was concerned that the council had said the system restoration was carried out on the account as it stood in August 2008 however emails had been provided of a later date. He also expressed concern that there were only 5 emails directly from and to the named individual and there were likely to be more. The complainant also said that he had emails that he believes would have been in the email account in August 2008 but the council had failed to disclose these. He referred in particular to an email dated 10 April 2007.

15. In its internal review of 5 January 2012, the council maintained that it did not hold any further information that it could provide in response to the request.
16. The council said that in response to the complainant's request, it had conducted the same search process that it had initially used because it had not kept a copy of its previous search results. However, it confirmed that this second search had revealed the same 63 emails that had initially been identified.
17. The council said that the external company it had enlisted had restored the entire email account as it stood on 15 August 2008. However, it clarified that this recovered data was then merged with the live email account for the named individual as at a date in early May 2010, although the council said that it did not have a record of the exact date. The council said that it had done this because it considered that searching this combined information would produce more information than only searching the recovered emails. The council clarified that in its letter of 14 June 2010 the total number of emails referred to that were identified using the key words included the emails from the live account. The council said that this accounts for the inclusion of emails that post-date the restoration of the email account as it stood on 15 August 2008.
18. The council also added that it is important to note that if an individual had deleted an email and emptied the deleted items folder, the email would not have been included in the backup process and would not have been in the live email account that was merged with the restored items in May 2010.
19. The complainant remained dissatisfied with the explanation provided by the council. He said that he found the explanation regarding merging the recovered emails with a live email account unconvincing. The complainant highlighted council correspondence that he considered

indicated that all 63 emails came from the backup tapes. The complainant also said that he did not think it was credible that the named individual's live email account in May 2010 should contain only 5 emails that were retrieved using the search word "wind". He pointed out that the named individual is a senior environmental health officer who has been dealing with major wind farm application for the council, at least two of which were on-going in May 2010. He said that he was able to produce evidence, from non-council sources, of this officer's email correspondence relating to major wind farm applications. The complainant said that the inference was that important email communication must have been deleted by the council.

20. The Commissioner considered the points raised by the council and the council's explanation. He concluded that on the balance of probabilities no further information was held. The council has accounted for the inclusion of email correspondence that post-dated the email restoration. It would appear that the council's previous communications had not been clear about the fact that the information included recovered emails and emails from a live account, however, that point has now been clarified and there is no strong reason to doubt the veracity of that explanation.
21. The Commissioner considered the concerns raised by the complainant about the lack of email communication directly to or from the individual concerned and emails including the key word "wind". However, he notes that the council has confirmed that it has conducted a search of the relevant information using the key words and those searches identified the same emails that had been initially identified and referred to in the council's letter to the complainant on 14 June 2011.
22. The Commissioner understands that if information in the complainant's possession was not identified as part of that search process, it is because it had been deleted at a point in time where it would not have been caught by the backup of the email system on 15 August 2008 or on the merged live email account from May 2010. On the balance of probabilities, the Commissioner considered that the council had provided the complainant with the information he had requested.

Other matters

Records Management

23. The complainant has expressed concerns about the deletion of email correspondence that he considers should have been retained. The Commissioner would like to draw the council's attention to the Code of Practice under section 46 of the FOIA ("the Code"). The Commissioner

recommends that the council considers the Code and ensures that it has appropriate procedures in place regarding records management. For ease of reference, the Code may be accessed here:

<http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>

Right of Appeal

24. 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

25. 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.
26. 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