

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 23 September 2013

**Public Authority:** East Staffordshire Borough Council

**Address:** The Maltsters  
Wetmore Road  
Burton upon Trent  
DE14 1LS

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a planning matter. East Staffordshire Borough Council disclosed some information and withheld other information under the exception for internal communications. During the course of the Commissioner's investigation the council disclosed the information previously withheld under the exception.
2. The Commissioner's decision is that East Staffordshire Borough Council has provided the complainant with all the information specified in the request and that, in doing so, it has complied with regulation 5(1) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

## **Request and response**

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4. On 30 January 2013, the complainant wrote to East Staffordshire Borough Council (the "council") and requested information in the following terms:  
  
*"Photos, complaint information and actions relating to Poppyfields, Burton Rd, Wychnor, Staffs planning ref ENF 2012/0031 for the period between 22 July 2012 and 25 January 2013."*
5. The council responded on 4 February 2013 and disclosed some information. It withheld one email falling within the scope of the request, citing the exception for internal communications.
6. Following an internal review the council wrote to the complainant on 4 March 2013. It stated that it was maintaining its original position regarding the application of the exception and provided the complainant with some further information.

## **Scope of the case**

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7. On 3 April 2013 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would examine whether the council had provided all the relevant held information and whether it had correctly withheld information under the exception for internal communications (regulation 12(4)(e)).
9. During the course of the Commissioner's investigation the council disclosed the information formerly withheld under regulation 12(4)(e) to the complainant. The Commissioner's investigation has, therefore, considered whether the council has provided the complainant with all the relevant information it holds.

## **Reasons for decision**

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### **Regulation 5 – Duty to provide environmental information**

10. Regulation 5(1) provides that a public authority that holds environmental information should make it available on request.

11. In this case the council has disclosed information to the complainant, however, the complainant has raised concerns that it has not provided all the relevant information it holds.
12. At the internal review stage and subsequently during the Commissioner's handling of the complaint, the complainant has expressed concerns that the council has not provided all the photos it holds that are relevant to the request. They have also stated that, of the photos disclosed, the council has not provided the dates that the photos were taken.
13. The Commissioner has considered whether the council has provided the complainant with all the information it holds which falls within the scope of the request.
14. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority has provided all the information which falls within the scope of the request (or was held at the time of the request).
16. In order to assist with this determination the Commissioner asked the council a range of questions which are reproduced along with the associated responses from the council below.

*What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?*

17. The council stated that the original request referred specifically to one of the council's files, namely planning file reference ENF 2012/00301 and stipulated a specific time period, i.e., 22 July 2012 to 25 January 2013.
18. The council confirmed that ENF 2012/00301 is a paper file and in order to comply with the request the Council copied all documents on the file for the relevant time period and sent them to the complainant. Aside from the document which was originally withheld by the council (subsequently disclosed), the entire file ENF 2012/00303 was provided to the complainant.
19. The council further argued that, at the time of the request ENF 2012/00303 was a live planning enforcement file. It explained that, in their request for internal review, the complainant notified the council that they did not believe they had been provided with all the information

they had requested. The council noted that the complainant's main concern was there were photos of the property identified in the request and records of complaints which had prompted the council's investigation and enforcement action.

20. In response to the complainant's query, the council confirmed that, records of complaints did not form part of the withheld information. In order to assist, the council obtained copies of photos of the property from its separate planning appeal file and emailed those to the complainant on 26 February 2013, as well as sending a hard copy in the post.
21. The council explained that the appeal file is physically separate from the enforcement file but has the same reference number. The file was opened when the complainant appealed against the council's enforcement notice served in respect of alleged breaches of planning control. The council has explicitly confirmed to the Commissioner that the complainant has been given copies of all the photos the Council has of the property identified in the request.

*If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.*

22. The council confirmed to the Commissioner that searches did not include electronic data.

*Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?*

23. The council confirmed that no relevant information has been destroyed.

*Is there information held that is similar to that requested and has the council given appropriate advice and assistance to the applicant in line with the duty contained at regulation 9 of EIR?*

24. The council confirmed that all the relevant information has been provided to the complainant.
25. The Commissioner advised the complainant of the outcome of his enquiries and his view that it seemed likely that the council did not hold any further relevant information.
26. The complainant maintained his view the council had not disclosed all photos relevant to the request, explaining that he had previously been provided with different photos by the Planning Inspectorate. In relation to the photos already disclosed by the council, the complainant also maintained that he wanted the council to provide the dates when these had been taken.

27. When presented with these queries, the council confirmed to the Commissioner that information (including photos) and other evidence provided to the complainant by the Planning Inspectorate, was originally provided to the Planning Inspectorate by the council itself. The council confirmed that, as the other party in an appeal against a planning Enforcement matter, it would be standard practice for information to be provided to the complainant in this manner.
28. In relation to the complainant's request for the dates of photos disclosed to them, the council confirmed to the Commissioner that it had re-checked the photos disclosed and confirmed that it did not hold the dates that these were taken.
29. The Commissioner considers that, whilst it may be that the case that the complainant has received different information via the planning enforcement appeal process, this has no material bearing on their EIR request as this identifies information held by the council at the time of the request. Having considered the council's explanations the Commissioner is satisfied that it has provided the complainant with all the relevant information it holds.

## Right of appeal

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30. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

31. 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.
32. 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 – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**