

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

Date: 5 June 2013

Public Authority: Stockton on Tees Borough Council
Address: Municipal Buildings
Church Road
Stockton on Tees
TS18 1LD

Decision (including any steps ordered)

1. The complainant requested information from Stockton on Tees Borough Council ("the council") relating to a planning matter. The council said that it did not hold the information. The complainant asked the Commissioner to consider whether this was correct.
2. The Commissioner's decision is that the council did not, on the balance of probabilities, hold the information requested.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 21 August 2012, as part of some on-going correspondence with the council about a planning matter, the complainant requested information from the council in the following terms:

"The author of the July 2000 document is very relevant as this may throw light on the term 'informal highway'...

You say the applicant 'chose' to amend but don't say who alerted them to what you describe as a 'constraint'. Was it an officer employed by SBC?"

5. On 17 October 2012, the complainant wrote to the council again and said:

"If you are unwilling to answer voluntarily, then please treat this as Freedom of Information request".

6. The council responded under the Freedom of Information Act 2000 ("the FOIA") on 26 October 2012. It gave these requests the reference SBC0072. It said that the information requested was not held by the council.

7. On 26 October 2012, the complainant wrote to the council again and said:

"SBC must explain the meaning behind the use of the term 'informal highway'.

SBC must explain who uncovered the constraint regarding the status of the village green".

8. The council responded under the same reference number. It said that it considered that it had already answered the complainant's questions in previous correspondence and it referred to the answers it had provided. The Commissioner understands that the council's position was that the information was not held.

9. On 31 October 2012, the complainant wrote to express dissatisfaction with the response. He said the following:

"The constraint was uncovered by either the Council or the Applicant. The Council, for its part, must confirm or deny whether it uncovered the constraint.

The council can explain what was meant by the term informal highway. The Council won't divulge authorship but has the knowledge of who played a part in the preparation of that document, and most importantly, whether those who played a part are still in employment and able to explain what was meant".

10. The council responded on 15 November 2012. The council reiterated its position that it did not hold the information requested.

Scope of the case

11. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He initially said that if the council did not have recorded information, there must be a member of staff who can supply answers to the questions from memory. The Commissioner wrote to the complainant to clarify that his jurisdiction

was limited to recorded information only. The complainant asked the Commissioner to consider whether the council held any recorded information.

Reasons for decision

Environmental information

12. The council dealt with the request under the FOIA however, in the Commissioner's view, the request should have been handled under the terms of the Environmental Information Regulations 2004 ("the EIR"). Any information that is "environmental" should be considered separately under the EIR. Regulation 2(1)(c) of the EIR defines environmental information broadly as any information relating to plans affecting or likely to affect the elements or factors of the environment. These requests relate to a planning matter and clearly fall within the scope of the EIR.

Regulation 5(1) – General duty to provide information

13. Regulation 5(1) of the EIR provides a general right of access to recorded environmental information that is held by public authorities. If information is held, it should be provided within 20 working days in accordance with regulation 5(2) unless an exception applies.
14. 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 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
15. The Commissioner considers that the complainant has requested information falling within three parts. The first part is a request to know the author of the July 2000 report or failing that, to know who played a part in the preparation of the document and whether these officers are still employed by the council. In response to the complainant's request,

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

the council said that council documents are not written by individual council officers and therefore the information was not held.

16. By way of background, the council explained to the Commissioner that the Stockton on Tees Local Plan (1997) formed the basis for planning and development in the borough. Following changes in national planning policy guidance and local circumstances, the council pursued a consultation which, it was envisaged, would form the beginning of a review of the Local Plan. Two papers were published during this review, the second being relevant to the request.
 - The Stockton on Tees Local Plan First Review: Issues Report (June 2000); and
 - Stockton on Tees Local Plan First Review: Central Norton Issues Report Consultation Paper (July 2000)

17. The council said that it was unfortunately the case that none of the current officers within the Spatial Planning Section of the council were employed by the council at the time of the relevant report in 2000. The council said that it had also consulted officers from technical services and its highways department who have confirmed that they have no recollection of making any contribution to the document. The council said that as there were no officers to consult, it was unable to confirm the processes used around the creation of the document or input of particular officers after this length of time. It said that the manager of the Development Plans Section would have been ultimately responsible although this information was not recorded. The council explained that this type of document "cross-cuts" many sections within the authority and it is likely that various officers would have created sections of the document according to their technical knowledge but no records are held regarding the involvement of individual officers. Once created, the document would have been treated as a generic council document to be presented to Cabinet, rather than being attributed to specific authors as the complainant has assumed.

18. The council said that during the relevant period, it is likely that any formal input from other departments would have been submitted to the council's Development Plans Section in paper format. The council confirmed that it had carried out a manual search of the Local Plans Section of the planning filing system. The council said that this had revealed that the only information retained was the paper copy of the final document. The council said that no other relevant electronic information was held. It said that the email accounts of officers who may have been involved would have been deleted when they left the employment of the authority in line with normal procedures. The council said that it is most likely that any relevant records were destroyed once

the final draft was approved. The council said that it was not aware of any obligation to retain this information and that its deletion or destruction would not have contradicted anything in its records management procedures.

19. The second part concerns a request to know who uncovered the planning constraint regarding the village green and whether it was a council officer. The Commissioner understands that this problem resulted in a revised planning application being submitted to the council. In response to the complainant's request, the council said that applicants are not required to inform the council of their reasons for amending a planning submission. The council told the Commissioner that although the council would have been aware of the constraint and may have discussed this with the applicant, there are no records held about this. The council said that it had searched all relevant written documentation, including minutes and emails of key planning officers and it could confirm that no relevant information was recorded. Planning officers have been consulted however they cannot recall details relating to this matter. The council explained that when a planning application is being considered, a wide range of issues will be raised and there may be multiple informal discussions with applicants. The council said that it would not be unusual for these not to be recorded in any way. The council also said that there is no reason to believe that any relevant information had been destroyed, deleted or mislaid.
20. The final part concerns a request to know the meaning behind the use of the term "informal highway". The council said that the term used in the July 2000 document is not one which is currently used by the council and the phrase has no recognised meaning in highway terms. The council said that highways are either adopted or un-adopted (private). The council said that the definition of the term was not included in the document or other guidance. The council said it had consulted all relevant highway officers that are currently employed by the council but nobody had been able to clarify what this term may have meant. The council again said that there is no reason to believe that any relevant information had been deleted, destroyed or mislaid.
21. Based on all of the above, the Commissioner was prepared to accept that on the balance of probabilities, the council did not hold the requested information. It is apparent that the issues date back over a number of years. The passage of time has clearly had a bearing on the amount of information that the council would have retained about the document and the availability of officers who recall what the situation at that time was. Nonetheless, the council has been able to provide some account of the likely process at the time and appropriate clarification has been provided to the complainant to help him to understand why some of the assumptions made were incorrect. The council has conducted

reasonable searches to check that the information was not held. The complainant was not able to present any specific evidence to the Commissioner that would indicate the existence of any recorded information relating to these requests.

Right of appeal

22. 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

23. 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.
24. 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
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