

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

### **Decision notice**

**Date:** 7 August 2014

**Public Authority:** Bedford Borough Council

**Address:** Borough Hall  
Cauldwell Street  
Bedford  
MK42 9AP

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

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1. The complainant has requested information from Bedford Borough Council ("the Council") which relates to his various complaints made to the Council since 2006.
2. The Commissioner's decision is that the Council does not hold any recorded information relevant to the complainant's request, other than that information which has already provided to him. The Commissioner considers that the Council has complied with Regulation 5(1) of the EIR.
3. The Commissioner does not require the Council to take any further action in this matter.

#### **Request and response**

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4. On 19 July 2013, the complainant wrote to Bedford Borough Council ("the Council") and requested information in the following terms:  
  
"I would like to respectfully request you to 1) disclose all documentation relating to my various complaints since 2006, the actions taken and the resulting outcomes pursuant to the freedom of information act..."

The information sought by the complainant stems from a planning enforcement complaint associated with Planning Application 08/02793/S73.

5. The complainant sent a further email to the Council on 20 August 2013. In his email he pointed out that the Council had yet to respond to his request for information and he asserted that he was seeking all of the documents relating to the matter in question under the Freedom of Information Act.
6. The complainant did not provide the Commissioner with a copy of the Council's response to his request. The correspondence which the complainant did provide to the Commissioner indicated that the Council appears to have responded to his request by advising him that the information contained in the Council's enforcement file is exempt and could not be provided.
7. The Council advised the complainant that information may be available to him under the Subject Access Request ("SAR") procedure of the Data Protection Act ("DPA"), and further, that the information provided under the SAR procedure would be limited to his own personal data.
8. As a result of the Council's advice the complainant submitted a SAR. The Council appears to have responded to the complainant's SAR under reference 'SAR 029'.
9. On 19 December 2013 the complainant wrote again to the Council. He reasserted his request for information as being for 'the complete file regarding a complaint I had with the planning office'. He complained that the Council had sent him only 'copies of my correspondence and documents I sent to the Council'. He stated that he required all documents relating to his matter and that the documents supplied by the Council *must* include the following:

"1. [a named officer of the Council] made notes after my first complaint; he met with me, a neighbour and [a representative of a named company]. Why are these notes missing?

2. [the named company] replied to a letter addressed to the Council regarding a further complaint about illegal works to their building and the disruption it has caused my business! Under the Data Protection Act my contact information in this letter should have been confidential. Someone in the Council wrote to [the named company] and sent them my details, where is the letter from the Council to [the named company]?

3. As I'm requesting all information regarding the above matter this should also include correspondence between the Planning Office and [the named company].
4. All correspondence between the Planning Office, ECHS, Councils and Cauldwell and Kingsbrook Urban Community Council."
10. On 2 April 2014 the Commissioner contacted the Council and asked it to reconsider the response it had made to the complainant under the DPA. The Commissioner also asked the Council to conduct an internal review of its handling of his request and to determine whether the information sought by the complainant fell to be considered under the FOIA or the EIR.
11. On 13 May 2014 the Council wrote to the complainant following the completion of its internal review. The Council advised the complainant that its previous response made under the EIR was incorrect and that its Planning Service had been asked to reconsider its response and to review whether the reply to his subject access request was appropriate.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 2 April 2014 to complain about the way his request for information had been handled.
13. The Commissioner's investigation concerned how the Council had responded to the complainant's information request and whether he had received all of the information held by the Council to which he is entitled.

### **Background of the case**

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14. The request for information in this case has stemmed from complaints made to the Council. The complaints concern development works carried out in 2006 at an industrial unit adjacent to the ones occupied by the complainant and to a planning application being granted permission in 2009.
15. The Commissioner understands that the complainant considered there were faults in how the Council had considered the planning application

- and that he was concerned about a breach of planning control in respect of the neighbouring industrial unit.
16. The Council investigated the complainant's concerns but failed to inform the complainant of its enforcement investigation.
  17. The complainant referred his concerns to the Local Government Ombudsman in 2010.
  18. The complainant informed the Ombudsman that he was not concerned with the sub-division of the neighbouring industrial unit, but with the works that were done and with the way the Council had responded to his concerns. This complainant expressed his belief that he had been discriminated by the Council over the period of his complaint.
  19. The complainant did not raise his concerns with the Ombudsman at the time the planning permission was granted. Consequently, due to the significant passage of time, the Ombudsman declined to investigate the complainant's concerns.

## **Reasons for decision**

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### **Regulation 5(3) – Personal data**

20. The Commissioner has considered the nature of the information sought by the complainant. He has noted that the information relates to a series of complaints he has made to the Council since 2006.
21. The extent to which the information requested by the complainant concerns the manner in which the Council dealt with his various complaints, leads the Commissioner to conclude that that information would fall for consideration under the provisions of the Data Protection Act 1998.
22. The Commissioner makes this conclusion on the grounds that the requested information would constitute the complainant's personal data. In order to determine whether it holds information within the scope of the complainant's request, the Council's starting point would be to search for relevant information with reference to the complainant's name, as he would be the focus of the information sought.

23. Information which constitutes the personal data of the applicant is exempt from disclosure under the EIR by virtue of Regulation 5(3). This states –

“To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph 1 [the duty to make environmental information available on request] shall not apply to those personal data.”

24. To the extent that the remaining information is not the complainant's personal data, that is, information which relates to the neighbouring unit and the granting of planning permission, the Commissioner believes that that information would fall for consideration under the Environmental Information Regulations 2004.

25. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –

'(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges, and other releases into the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.'

26. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
27. The Council has informed the Commissioner that it holds information relevant to the complainant's request in hard copy format. This information has been printed from scanned images and computer records.
28. The information held by the Council was initially considered for disclosure under the provisions of the EIR.

29. The Council determined that some of the information would have constituted the complainant's own personal data and therefore the Council advised the complainant to submit a Subject Access Request ("SAR") under the Data protection Act.
30. The complainant subsequently made his SAR and was provided with information on 28 November 2013.
31. Following the Council's information disclosure, the complainant queried the extent of the information he had been sent. This ultimately resulted in the Council undertaking internal reviews of its handling of the complainant's request under the EIR and the DPA in May 2014.

### **Duty to make environmental information available on request**

32. Regulation 5(1) of the EIR states that –

"...a public authority that holds environmental information shall make it available on request."
33. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds any further recorded information which is relevant to the complainant's request, other than that information already supplied.
34. The Commissioner makes this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
35. The Commissioner investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction.
36. In its response to his enquiries the Council has assured the Commissioner that all of the information it holds has been provided to the complainant. The information disclosed to the complainant consists of all of his personal data and all of the information relevant to the EIR.
37. The Council has also confirmed that no information has been withheld under any of the exemptions of the DPA or the exceptions to disclosure provided by the EIR.

38. One of the questions asked by the Commissioner concerned item 1 of the complainant's request, that concerning the notes made by [a named officer of the Council] at a meeting attended by the complainant.
39. The Council advised the Commissioner that, 'it is not considered likely that [the named officer] would have been involved in any such meeting', and, 'in any event no such notes exist'. The Council believes that if the complainant did attend a meeting with one of its officers it was possibly with one of [the named officer's] junior colleagues. Nevertheless it assures the Commissioner that no notes of any meeting are held.
40. Applying the civil test, and in the absence of any evidence to the contrary, the Commissioner has decided that the Council does not hold any further recorded information under the terms of the complainant's request. In consequence of this decision the Commissioner has determined that the Council has complied with Regulation 5(1) of the EIR.

## Right of appeal

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41. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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**