

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

### **Decision notice**

**Date:** 12 January 2015

**Public Authority:** Mid Sussex District Council  
**Address:** Oaklands  
Oaklands Road  
Haywards Heath  
West Sussex  
RH16 1SS

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

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1. The complainant has requested all information held by Mid Sussex District Council (the council) relating to a specific property between 1 January 2010 to 8 May 2014. The council provided its response but the complainant was concerned that more information was held.
2. The Commissioner's decision is that the council failed to provide the complainant with all the information it held within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To provide the complainant with copies of the additional information that has been located during the course of the Commissioner's investigation.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 8 May 2014, the complainant wrote to the council and requested information in the following terms:

*"Access to all correspondence both by the Council (all departments and subject matters) or to the Council or Councillors or from third parties including emails, reports, memos, reviews, letters, transcripts, minutes, agendas, internal correspondence and records, faxes, file notes, site visits, meeting minutes and notes and agendas, pre and post planning advice, enforcement reports, decision logs and action logs, telephone conversation records and all other documents or associated material relating to Willow house (formally The Bungalow ), Handcross Road, Staplefield, West Sussex, RH17 6EJ. My request above is to cover from 01/01/2010 to 08/05/2014."*

6. The council responded on 10 June 2014 stating that all planning information in respect of the site, with the exception of some enforcement and pre-planning application information, was now available on the Online Planning Register. It said that the pre-planning advice and the first of the enforcement files were enclosed. It then said the additional enforcement files sent by email in three further instalments.
7. The complainant wrote to the council on 2 July 2014 to express his dissatisfaction with the response as he did not consider it to contain a full suite of data. The council responded on 3 July 2014 explaining that the response had referred him to the material that could be found on the Online Planning Register and that further information had been sent in four emails.
8. On 8 July 2014 the complainant expressed further dissatisfaction with the response as he considered that the original response had not directed him to the website and that a full set of data had not been sent. He drew attention to a specific document which he stated should have been included but was not.
9. The council responded on 9 July 2014 maintaining its original position and referring the complainant to pursue a complaint to the Information Commissioner. The Commissioner therefore considers this response to be the council's internal review.

## Scope of the case

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10. The complainant contacted the Commissioner on 29 August 2014 to complain about the way his request for information had been handled. He was concerned that the council had not provided him with all the information he had requested.
11. The Commissioner therefore considers the scope of this case to be to determine the extent to which the council holds any additional information which falls within the scope of the request which has not been provided.

## Reasons for decision

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### Regulation 2 – Is it environmental information?

12. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
13. The Commissioner considers the information in this case can be classed as environmental information, as defined in regulation 2(1)(c) of the EIR. This states that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land.
14. The Commissioner is therefore satisfied that as this request is for information concerning the use of land it falls under the EIR.
15. All the exceptions under the EIR are subject to the public interest test, including regulation 12(4)(a). However, the Commissioner can see no practical value in applying the test where information is not held and he does not expect public authorities to do so

### Regulation 5

16. Regulation 5(1) of the EIR states that:

*"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."*

17. Regulation 5(2) of the EIR states that:

*"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."*

18. In situations where there is a dispute between a public authority and a complainant about the extent to which the requested information is held, the Commissioner applies the civil standard of the balance of probabilities. The Commissioner must therefore decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request. In making this decision the Commissioner will in particular consider the extent of the scope and quality of the searches and other explanations offered as to why certain information is not held.
19. The complainant informed the Commissioner of the nature of the information he considered to be missing. In particular, he was concerned that the following information had not been disclosed:
  - Notes and records from numerous site meetings and reports regarding landscaping and enforcement.
  - Internal and external correspondence with the Chief Executive of the council and the Cabinet Member for planning.
  - Internal and external correspondence with his representing councillor.
  - A copy of a speech which the agent of the developer provided to the planning committee meeting held on 23 May 2013.
20. The Commissioner therefore wrote to the council to ask it for information about the searches it had conducted to locate the requested information. He also asked the council to ensure that it made further searches for the above listed information.
21. With regard to notes and records from site visits and meetings and reports regarding landscaping and enforcement, the council explained that the information it records in relation to planning investigations is set by the Planning Policy Guidance 18: Enforcing Planning Control. Point 23 of the guidance states that "When complaints about alleged breaches of planning control are received from parish or community councils, or members of the public, they should always be properly recorded and investigated". The council therefore confirmed that it is required to log an investigation. However, it stated that there is no requirement for every site visit to be recorded. Despite this, it has advised that its investigations officers fill in a site visit sheet for each visit they make. If they only drive by or there is no-one in they will often record this in their diaries. In terms of the information the council holds in this regard, it has confirmed that both site visit sheets and copies of relevant diary pages were included in the files sent to the complainant

on 10 June 2014. It has stated that there is no further information held regarding site visits.

22. Considering the internal and external correspondence with the Chief Executive and Cabinet Member for planning, the council initially informed the Commissioner that unless the information was passed to the planning department, it would not have been recorded as relevant to the site in question. The Commissioner's view is that that simply because information is not held on the relevant planning or planning enforcement file does not mean that it does not fall within the scope of the request. The council therefore confirmed that the complainant did contact the Chief Executive and the Cabinet Member for Planning and that it does hold such information in the form of emails.
23. The council stated that while the majority of these emails were passed on to the planning department and were therefore either included in the enforcement files that were sent to the complainant on 10 June, or were available on the Online Planning Register. However, having reviewed the information at the instruction of the Commissioner, the council has located a few emails that were not included and which were therefore not disclosed to the complainant in response to his request. The Commissioner notes that some of the emails were sent or received by the complainant, but this does not preclude them from falling within the scope of the request.
24. Turning to the internal and external correspondence with the complainant's representing councillor, following the Commissioner's intervention, the council contacted both elected representatives for the complainant's ward. The council has explained that any information it holds seems to be on the online planning register or in the enforcement files already sent to the complainant. Councillor Robert Salisbury has confirmed to the council that he has not kept any emails relating to the property and Councillor Pete Bradbury forwarded to the council any emails relating to the matter that he still holds in his mailbox. For completeness the council provided the Commissioner with copies of the information the councillors sent to the council in response to these enquiries. The Commissioner reviewed the information and notes that there are a very small number of emails which are not on the Online Planning Register and were not disclosed as part of the enforcement files.
25. Finally, the Commissioner asked the council to reconsider whether it held a copy of a speech which the agent of the developer provided to the planning committee meeting held on 23 May 2013. The council informed the Commissioner that it has now located the document. It explained that it seemed that the officer concerned uploaded the email containing the document, but not the attached statement itself. The

council has said that the officers concerned genuinely believed that everything was on file on the Online Register, but occasionally the odd document may be missed, which seems to have been the case here.

26. The Commissioner has concluded that on the balance of probability, the council has not provided the complainant with all the information falling within the scope of his request. He therefore finds that the council has failed to comply with regulation 5(1). Although he notes that the additional information that has been located in the course of the investigation is limited. He also notes that the council has agreed that the information can now be disclosed.
27. As the initial response to the complainant was provided outside the prescribed 20 working day time frame, and the additional information which has now been located has not yet been provided, the Commissioner also finds that the council has failed to comply with regulation 5(2).

## Right of appeal

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28. 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: 0870 739 5836

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)

29. 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.
30. 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**