

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 June 2015

Public Authority: Wiltshire Council
Address: Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Decision (including any steps ordered)

1. The complainant has requested correspondence on the commissioning of flood survey work between Wiltshire Council ("the Council") and their contractors in the bottom area of Urchfont. The Council provided several emails within the scope of the request and stated no further information was held.
2. The Commissioner's decision is that the Council has provided all the information it holds within the scope of the request.

Request and response

3. On 30 January 2015, the complainant wrote to Wiltshire Council and requested information in the following terms:

"I would like to see all correspondence on commissioning of and undertaking of flood survey work between Wiltshire Council and their contractors, Atkins, regarding flood and drainage issues in the area of Urchfont village known as the bottom in the period March 2014 up to and including this current period. Repeated requests for transparent sharing of this information to the Councillor who has chosen to act as an intermediary between the residents/Parish and Wiltshire Council and its officers has not brought a satisfactory conclusion. I believe information is being withheld from residents who have a right to understand the commissioning of this work, and its conclusions."

4. The Council responded on 17 February 2015. It stated that it considered the request should be considered under the Environmental Information Regulations 2004 (EIR) as the information all related to the environment. This response from the Council disclosed two emails from Atkins to the Council with the initial report and additional survey information. Also disclosed was a reply from the Council about the assessment of pipe sizes. The Council stated this was all the information it held within the scope of the request and no information was being withheld.
5. Following an internal review the Council wrote to the complainant with its response. It stated that after contacting relevant officers at the Council and asking them to undertake further searches it had not found any further information relevant to the request.

Scope of the case

6. The complainant contacted the Commissioner on 24 March 2015 to complain about the way his request for information had been handled.
7. The complainant specifically raised concerns that as three reports on drainage issues had been completed by an outside contractor it seemed unlikely that the three disclosed emails were the only correspondence over this 12 month period. The complainant argued that this kind of survey work would have been likely to have required a project mandate at least and would not have been carried out on the back of a verbal discussion.
8. The Commissioner therefore considers the scope of his investigation to be to establish whether any further information relevant to the request is held by the Council.

Reasons for decision

9. 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."
10. The Commissioner has considered whether the Council has complied with this section of the EIR by providing just three emails in response to the request.

11. After providing three emails relevant to the request the complainant submitted his request for an internal review. In this request the complainant provided further detail to support his belief that more information would be held.
12. To clarify, the emails and attached information disclosed by the Council to this point were:
 - An email from Atkins to the Council on 10 December 2014 with the initial report.
 - An email from Atkins to the Council on 7 January requesting additional survey information.
 - Reply from the Council to Atkins requesting assessment of pipe sizes.
13. The complainant stated that the first email that was disclosed had already been made available to affected residents and the second email contained information already known to residents. The complainant considered that these emails strongly indicated that previous correspondence had been exchanged between the Council and Atkins and that this correspondence and the project mandate should have been provided.
14. The Commissioner therefore wrote further to the Council and in determining whether it held any further information within the scope of the request he considered the standard of proof to apply was the civil standard of the balance of probabilities. In deciding where the balance lies in cases such as this one the Commissioner may look at:
 - Explanations offered as to why the information is not held; and
 - The scope, quality, thoroughness and results of any searches undertaken by the public authority.
15. The Commissioner wrote to the Council to ascertain what searches it had carried out to determine that the information provided was the only relevant information held. The Commissioner also asked the Council to address the complainant's concerns regarding the lack of a project mandate or similar document.
16. The Council had previously explained to the complainant that after conducting further searches during the internal review and finding no further information, the head of service at the Council stated that:

"There was no Project Mandate to Atkins for the drainage investigations at Urchfont.

The work was undertaken following discussions between the Council's Engineers and the Atkin's representatives. These discussions took place at various meetings, including at the Operational Flood Working Group and at meetings with residents and the Parish Council. It was not considered necessary to document these discussions beyond the three e-mails sent to confirm particular aspects of the work being undertaken.

The site is one of many being investigated following the flooding across the country in early 2014 and the further flooding in September 2014 and specific written instruction were not considered necessary."

17. Taking this into account, the Commissioner asked the Council to confirm the searches it had carried out to determine if any further information was held and why it considered these searches would have returned relevant information. The Council confirmed it asked staff involved in the drainage issues at Urchfont to be involved in the searches. It also asked the Council's consultants to advise if they held any information regarding the commissioning of the flood survey work.
18. The Council considered these personnel to be the only staff likely to hold information on the drainage issues at Urchfont as they were the staff who carried out the work. The Council identified two key officers and stated that thorough searches were done of information held on their computers using search terms based on Urchfont drainage.
19. After asking staff to search for relevant information and conducting searches of information held on key staff's computers, the Council confirmed to the Commissioner that no further information had been identified. The Council explained that the staff involved, including the consultants, had confirmed that the instruction to do work was given verbally and there is no written document that might be considered a scoping document or project mandate.
20. The Council has been unable to provide any more detail on the searches it conducted and considers the information it has been provided to be sufficient in light of the fact that the instruction to work was given verbally. The Council has provided three emails on the drainage issues which it maintains is the total of all written communication falling within the scope of the request.
21. The complainant has provided his arguments as to why he does not consider that these three emails can be the sum total of all the communications. He has argued that his request was for any correspondence between the Council and its contractors on the drainage issues at the Bottom and as the request was for the period of March 2014 to March 2015 it is unlikely that only three emails would have been

exchanged and the emails provided appear to refer to earlier correspondence which has not been provided.

22. The Commissioner has examined the emails that were disclosed and notes that the first of these (dated 10 December 2014) states "*as discussed find attached our technical note.*" He acknowledges that this could be seen to imply there were earlier discussions which resulted in correspondence however the Council has responded to this point by clarifying that the work was undertaken following discussions at various meetings between the Council's Engineers and Atkins. The discussions which occurred during these meetings on wider issues were not documented as it was not deemed necessary to do so other than in the three emails provided where confirmation of specific aspects of the work being undertaken was required.
23. The Council clarified that the site in question is one of several being investigated following the flooding across the County in early 2014 and September 2014 and specific written instructions to undertake flood survey work were not required.
24. In reaching a decision in this case the Commissioner has considered the arguments presented by both sides and has focused on two main points: whether the Council holds a project mandate or similar document; and whether the emails already disclosed point to other correspondence which has not been provided.
25. With regard to the first point; the Commissioner recognises that generally speaking it would be expected that work being undertaken by a contractor would be carried out under some form of instruction and guidelines. This may take the form of a project mandate or project plan and the complainant therefore expected a document of this type to be included within the scope of the request as he asked for correspondence on the commissioning of and undertaking of flood survey work.
26. That being said the Commissioner notes that the Council has on several occasions reiterated the fact that there is no project mandate or any other such document which would fall within the request. The Council has stated that instructions were given verbally to Atkins to undertake the flood survey work. The Commissioner has weighed up these arguments and on balance has to accept the arguments presented by the Council that it does not hold any form of project mandate. In reaching this view the Commissioner has been mindful of the Council's explanation that the survey work at the Bottom was only a part of ongoing investigation work being done by the Council into flooding across the whole County. As such, it is possible there may not have been specific instructions to Atkins about this particular survey work in this one area.

27. With reference to the second issue – whether further correspondence is held that has not been provided – the Commissioner has already acknowledged that he can appreciate how the wording in the emails may imply there is further information held. However, the Council has stated there was no other written correspondence and the Commissioner accepts the “discussions” referred to in the email could have been verbal discussions and this does not necessarily imply further written discussions had taken place.
28. The Commissioner therefore has to make a decision on balance and in doing so he has looked at the searches carried out by the Council to establish if any further information is held. He acknowledges that the searches carried out by the Council were not hugely extensive but nevertheless did require the staff at the Council involved in the work to search their records and computers for any information referring to the Urchfont drainage. The Commissioner is satisfied that these searches would have been adequate searches to determine if information was held within the scope of the request.
29. It is therefore the Commissioner’s decision that the Council has complied with regulation 5(1) of the EIR. He finds that, on the balance of probabilities, the Council does not hold any further information within the scope of the request.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Pamela Clements
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