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

Date: 8 October 2015

Public Authority: Arun District Council
Address: Arun Civic Centre
Maltravers Road
Littlehampton
BN17 5LF

Decision (including any steps ordered)

1. The complainant has requested information relating to costs expended on Bognor Regis regeneration. Arun District Council provided some summarised information and stated that further information is not held. The Commissioner's decision is that Arun District Council does, on the balance of probabilities, hold further information and has therefore incorrectly applied the exception at regulation 12(4)(a). He has also decided that the council failed to comply with regulation 11(4) by taking almost 5 months to provide an internal review response.

2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:

   - Either comply with regulation 5(1) or issue a new refusal notice giving valid grounds for refusal.

3. The public authority must take this step 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

4. On 9 December 2014 , the complainant made the following request for information via the WhatDoTheyKnow website:

> "Under the Freedom of Information Act 2000, I require Arun District Council to provide me with ALL of the financial costs, staff and other resource costs (including outsourced resources) expended by Arun District Council on Bognor Regis regeneration, from and including the creation of the Bognor Regis Master plan by BDP. In order to help with this task, please use a threshold of £2000.00 and above expenditure only to be included. In the presentation of these costs, please provide the date of expenditure, reason for expenditure and the value of each expenditure payment or resource, year by year.
>
> These costs to include any that have been expended for Bognor Regis regeneration that may have been attributed to other cost centres.
>
> In addition, provide me with a realistic forecast of what ADC considers needs to be expended in the future on Bognor Regis Regeneration and to include expenditure committed but not yet spent.
>
> I am aware that the cost information I have asked for is readily and easily available, as it will be included in each years audited accounts and current budget for the current financial year and 2015/6. However, I am not an accountant and will need ADC to extract the costs I require from these accounts and present them in terms that the lay person will understand as stated above."

5. The council responded on 23 January 2015. It said that the information requested is not held by the council for the purposes of section 3(2) of the FOIA and therefore it is not able to provide the details described. It provided three tables relating to St Modwen/ Bognor Regis Regeneration Expenditure, Bognor Regis Taskforce net expenditure, and Bognor Regis Taskforce Employee Expenses detailing total expenditure by year.

6. The complainant requested an internal review on 26 January 2015.

7. The council provided its internal review response on 15 June 2015. It reiterated that it does not hold the requested information and provided the following explanation:

> "I am informed that Local Authorities are required to prepare their accounts based upon services not areas or projects. In this regard, they are required to follow the Code of Practice on Local Authority Accounting which requires the analysis of gross expenditure, gross

income and net expenditure but only by service. The Council is therefore able to provide information on the total expenditure of the Economic Regeneration service across the Arun district but it cannot provide specific information on the cost of Bognor Regis regeneration, except for the information already provided relating to the Bognor Regis Regeneration Taskforce."

Scope of the case

8. The complainant initially wrote to the Commissioner on 9 June 2015 to complain about the way his request for information had been handled.

9. During the investigation, the Commissioner informed the council that he considers the requested information to be environmental by virtue of Regulation 2(1)(c) because a regeneration scheme is likely to constitute a measure affecting the state of the elements of the environment, such as land and landscape, and costs relating to the regeneration is information on that measure.

10. The council accepted that the request was for environmental information and applied the exception at regulation 12(4)(a). Therefore the Commissioner has considered whether the council correctly applied that exception.

11. He has also considered whether the council complied with the requirements of regulation 5(2) and regulation 11(4) of the EIR.

Reasons for decision

Regulation 12(4)(a)

12. Regulation 12(4)(a) applies where the authority does not hold the information which has been requested.

13. 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 is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is 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 civil standard of the balance of probabilities.

15. The complainant has said that the information 'must be contained within the annual accounts provided to the people and to the Auditors by law'. He also said that in order to provide the totals and net figures given in the aforementioned tables, logic leads him to believe that there must be information that was used to compile the tables.

16. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. He informed the council that he appreciates that that local authority may need to prepare their accounts based on services rather than areas or projects but it doesn't necessarily follow that the information isn't held with reference to specific areas or projects; it is feasible that the requested information is held despite the accounting requirements. The Commissioner also pointed out to the council that some of the information requested is the type of information that should be published in accordance with the Local Government Transparency Code 2015[1].

17. The council said that its Senior Accountant, and its Financial Services Manager have explained that financial information within the council is organised by 'cost centre codes', which are the council's financial reference codes, and that its cost centre code for regeneration covers all regeneration costs across the district therefore specific costs relating to the regeneration of Bognor Regis cannot be identified, even from commentaries within the records themselves. It said that the only exception to this are the costs attributed to the Bognor Regis Taskforce which historically had its own cost code and clarified that those costs are identifiable and have been forwarded to the complainant in previous correspondence. The council also said that it had considered the response from its Planning and Economic Regeneration Service which undertook its own search for relevant material. It stated that it does not hold any information regarding the costs for the regeneration of Bognor Regis nor does it hold any information which would help to identify the costs for Bognor Regis regeneration within the district-wide cost centre code.

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1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf

18. In relation to the searches carried out, the council said that searches were made by its Finance and Property Service for relevant information recorded against the council's cost centre codes and that costs attributed to the Bognor Regis Taskforce were identified as this had a separate cost centre code. It said that searches were also carried out by its Planning and Economic Regeneration Service as it was thought that this team may have held information which could be used to identify which costs, within the district-wide cost centre code, could be attributed to the regeneration of Bognor Regis. It further explained that searches of electronic data were made by the Finance and Property Service using the cost centre codes which were deemed appropriate having regard to the information being sought and that the Planning and Economic Regeneration Service searched electronic files, including archived files, in full without using search terms. It also said that its Planning and Economic Regeneration Service hold some manual records and these have been searched to determine whether any relevant information is held. The council stated to the Commissioner that information relevant to the scope of the information request is not held by the council and referred to that statement in response to the Commissioner's questions regarding whether information had ever been held but deleted, if so whether it has a record of destruction, whether copies of information may have been made and held in other locations, and in response to questions regarding its records management policy.

19. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. It said that there is no business purpose for the information to be held as it records financial information relating to regeneration on a district-wide basis and that it follows the Code of Practice on Local Authority Accounting which requires the analysis of gross expenditure, gross income and net expenditure by service. It also said that whilst it publishes information in conformity with the Local Government Transparency Code 2015, the data published is still subject to the same cost centre codes described above and as such, it is not possible to separate the costs relating to the regeneration of Bognor Regis from the information published.

20. Although the council's arguments as to why it doesn't hold the requested information, except the tables already provided, seem feasible when taken at face value, the Commissioner was wasn't convinced that, on the balance of probabilities, further information would not be held. He noted from the information that had been disclosed (three tables relating to St Modwen/ Bognor Regis Regeneration Expenditure, Bognor Regis Taskforce net expenditure and Bognor Regis Taskforce Employee Expenses detailing total expenditure by year) that considerable sums were expended on the project, for

example, £337 000 net expenditure in 2008/2009 and a total in excess of £1 million. He was also mindful of the requirement for local authorities to publish payments over £500.

21. The Commissioner therefore looked at the financial information on the council's website. The website details payments over £500 by month from 2013/2014[2]. Looking at the first set of data (April 2013) the Commissioner noticed the following entry:

> "Transaction no. 475265: Payment of £5,000.00 to Urban Delivery Limited on 09/04/2013 Service: Economic Regeneration; Expense type: Professional fees; Project/location: Bognor Regis Regenaration Details: For work on the Regis Centre Site"

22. He then looked at the data for September 2013 and noted the following entries:

> "Transaction no. 487471: Payment of £5,000.00 to Urban Delivery Limited on 10/09/2013 Service: Economic Regeneration; Expense type: Professional fees; Project/location: Bognor Regis Regenaration Details: For work on the Regis Centre Site"

> "Transaction no. 487648: Payment of £4,192.00 to Sustrans Limited on 24/09/2013 Service: Economic Regeneration; Expense type: Professional fees; Project/location: Bognor Regis Regenaration Details: To provide and install signs for Cycling on the Prom in Bognor Regis".

23. The Commissioner found further entries relating to Bognor Regis regeneration but has not found it necessary to detail them all here.

24. The Commissioner considers that the above information is the type of information that falls within the scope of the request in this case as it details costs, over £2000, expended by the council on Bognor Regis regeneration. He acknowledges that such costs may have been included in the tables provided, but the request did not ask for total costs per year, it asked for it details of each expenditure. He therefore considers that, on the balance of probabilities, further information is held by the council and it was therefore incorrect to apply regulation 12(4)(a) to this request.

[2] http://www.arun.gov.uk/financial-information

25. The Commissioner also notes that the neither the council's responses to the complainant or the Commissioner mention the part of the request for 'a realistic forecast of what ADC considers needs to be expended in the future on Bognor Regis Regeneration' including 'expenditure committed but not yet spent'. Given that the council's website details ongoing plans for the regeneration of Bognor Regis[3] including estimated delivery costs, the Commissioner considers it likely that information within the scope of this part of the request is held by the council.

Regulation 5

26. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.

27. The complainant submitted his request for information on 9 December 2014. The council did not provide a response to the request until 23 January 2015. Consequently the Commissioner finds that the council has breached regulation 5(2) of the EIR, in that it did not provide a response to the complainant within 20 working days.

Regulation 11

28. Regulation 11(1) of the EIR provides that an applicant may make representations to a public authority, if he considers that the authority has failed to comply with the requirements of the EIR in relation to his request.

29. Regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.

30. The Commissioner notes that the complainant in this case clearly requested an internal review on 26 January 2015 but the council did not provide an internal review response until 15 June 2015, almost 5 months later.

31. The council has failed to provide an internal review response within the appropriate time period and therefore the Commissioner finds that it has failed to comply with regulation 11(4) of the EIR.

[3] http://www.arun.gov.uk/regeneration-in-bognor-regis

Right of appeal

32. 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

33. 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.

34. 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