

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

Decision notice

Date: 26 January 2016

Public Authority: Cheshire West and Chester Council
Address: County Hall
Chester
Cheshire
CH1 1SF

Decision (including any steps ordered)

1. The complainant requested information relating to the statutory planning index which all local planning authorities are required to retain from 1947–1974. He initially requested a copy of the index and other information (which the council responded to), however the council applied section 12(4)(b) to his request for a copy of the index. The complainant therefore narrowed his request to confirmation that an index is held by the council. The council has provided the Commissioner with details demonstrating that an index is held, of how the index is held and how the information can be searched by a member of the public.
2. The Commissioner's decision is that council has responded correctly to the request by confirming that it does hold an index. He has however decided that the council failed to respond to the request within the 20 working days required by Regulation 5(2).
3. The Commissioner does not require the council to take any steps

Request and response

4. On 1 May 2015 the complainant made 2 requests for information regarding the council's planning register and planning index. The first request was for:

"A copy of the council's statutory planning register / electronic inventory of the archive location(s) of all of the original planning files (over the period 1947 - 1974) that are held by the council but not currently accessible on the council via the planning web portal / statutory planning register. The file is titled "11.08.2014 PLANNING.XLS". I can personally testify that I have seen this database and therefore know that this is information held by the Council.

A full set of the scanned copies of the original statutory planning register plotting sheets / area plans for the CWaC area.

A full set of scanned copies of the planning index cards that detail subsequent planning applications and activity .

I would also request formal clarification from the council as to a) why copies of original planning files from the period 1947 - 1974 (which it is known are currently held by the council) are currently, and quite unlawfully, excluded from the councils statutory planning register and b) why no detail or guidance is provided on the council's planning website as to how members of the public can realise their statutory entitlement to access and inspect planning records dating from the period 1947 - 1974."

5. The second request was for:

"I refer to The Town and Country Planning (Development Management Procedure) (England) Order 2010:

*36(9) To enable any person to trace **any** [my emphasis] entry in the register, every register shall include an index together with a separate index of applications for development involving mining operations or the creation of mineral working deposits.*

I therefore also request a copy of the above statutory index of every (1947 - present day) application for planning permission relating to the council's planning authority area."

6. The council responded on 30 June 2015. It provided some information, however it withheld a copy of the information falling within the scope of the second request under Regulation 12(4)(b) (manifestly unreasonable). This was on the basis of the time it would take to collate, scan and provide the information to the complainant.
7. The council carried out a review of its request and wrote to the complainant confirming its outcome on 14 August 2015. It accepted that its initial response had taken longer than the statutory deadline of 20

working days, provided further information as regards the first request but upheld its decision regarding the second request.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner clarified that the complainant was satisfied with the council's response to the first part of his request, albeit that the disclosures fell outside of the deadlines required in Regulation 5(2) (and he wished this delay to be recognised in the Commissioner's decision notice).
10. However he asked the ICO to look at the council response to question 2 further. He stated to the Commissioner that his complaint in this respect was not the application of Regulation 12(4)(b). It involved:
 - "a) the lateness of the response(s) and*
 - b) the Council has told me that it does have a fully compliant statutory planning index for the entire period 1947 - present day BUT it has never actually produced, or told me where I can access, this information i.e. the searchable index that enables any person to trace any entry during the period 1947-1974."*
11. He considered that given his previous experience with the Council it was possible that it did not hold an index which met this requirement.
12. The Commissioner therefore considers that the request falls into 2 parts:
 - a) recognition of the delay which occurred before the responses were issued, and
 - b) confirmation from the council as to whether a statutory index is held which a member of the public is able to access to search to trace any entry into the planning register between 1947 - 1974.

Reasons for decision

Whether an index is held

13. Regulation 5 of EIR states that:

5. - (1) 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.

14. Regulation 12(4)(a) provides an exemption to authorities where the requested information is not held. In this case however the council has not claimed this exemption as it confirmed that it does hold an index. It applied Regulation 12(4)(b).

15. If however no index is held by the council it would need to apply Regulation 12(4)(a). Further to this it may have been misleading to apply Regulation 12(4)(b) on the grounds that responding to the request would create a manifestly unreasonable burden upon it when no actual index was held,

16. As stated, the complainant has not questioned the application of Regulation 12(4)(b) further and so the Commissioner has not considered this in this decision notice. However following his previous history with the council the complainant has questioned whether an index is in fact held by the council for applications between 1948-1974. He therefore asked the Commissioner to consider this aspect further.

17. In this case therefore the situation is reversed from the norm in that the council is claiming that it does hold the information, however the complainant has doubts that it does. He points out that the council has a statutory duty to hold an index but he has seen no evidence that it does in fact do so during his past dealings with the council.

18. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

19. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

20. The statutory requirement for an index is laid out in the legislation as set out in the complainant's request above. The specific requirement is that set above in s 36(9); 'To enable any person to trace any entry in the register, every register shall include an index...'. The complainant has clarified that it is only this section of the requirements that he is seeking confirmation over. He is not questioning the existence of any index relating to mineral applications.
21. There are no specific requirements set out for the index other than that planning authorities will index planning applications from the planning register in it and that it is available to allow any member of the public to trace any entry in the planning register.
22. There is therefore no set requirement for the form or format of an index, nor whether the index must be held in one office or a number. The important aspects of the section are that an index must be included in every register, and that any member of the public must be able to search this in order to trace any entry in the register.
23. The Commissioner asked the council to clarify whether it does hold an index, to confirm whether a member of the public can access the index and to explain in detail how any member of the public can access the index in order to trace any entry in the planning register.
24. The council confirmed that it holds an index and that the index is held electronically from 1974 onwards and in paper between 1948 and 1974.
25. In response to the Commissioner's question as to whether there are a number of planning registers, with an index attached to each one, the council said that it does not hold the index as a single document. Due to past responsibilities on planning regulation a number of authorities previously administered planning registers (and together with this, the index), and these are retained in various council offices, and in various formats across the county. It further confirmed that:

"Cheshire County Council was the overarching authority between 1948 and 1974 and there were nine district councils underneath which issued decisions on their behalf, each with a unique prefix e.g. 3/5. A list of these is detailed below with the typical application number prefix and the form in which the register is held. A manual search of each index would be required first to identify the application for a particular site.

*Northwich Rural District Council – 3/5 applications - microfiche
Chester Rural District Council – 2/3 applications – hard copy
Runcorn Rural District Council – 3/6 applications – decision only
Northwich Urban District Council – 3/2 applications - microfiche
Tarvin Rural District Council – 2/4 applications - microfiche*

*Winsford Urban District Council – 3/4 applications - microfiche
Ellesmere Port Borough Council – 2/1 applications – hard copy
City of Chester – TP, year number and advert applications – hard copy
Neston Urban District Council – 1/3 applications – hard copy*

Also, Cheshire County Council directly issued decisions (for example: school applications). The references corresponded with the prefixes for the relevant above mentioned districts.

26. It confirmed that there is no compendium of indexes which a member of the public could access in one council office to search all indexes in one place. It does however hold a basic set of instructions of where the locations are for the different parts of the register.

Can members of the public search the index

27. It confirmed that whilst members of the public can view the index (in the form of a ledger), they would firstly need to establish which ledger they would require by determining the relevant planning permission for a particular site. It confirmed that this is why it asks members of the public to provide it with the address which they are seeking information on in order to determine this on their behalf.
28. For instance it said that a search for parts of the authority would require the use of its electronic mapping system on its internal database system, where the enablement of read only access would be required. Some hard copies of planning files are also stored off site in a Council storage facility which need to be requested (so these files are not instantly accessible).
29. The requirement is that a member of the public can access the index to search for relevant applications. The Commissioner therefore asked the council to explain in a step by step process how a member of the public would access the index in order to trace a planning application file. The council explained that:

“To reflect the Cheshire West and Chester legacy authorities (pre-2009) we would break this into the three titles of the predecessor district councils: Ellesmere Port and Neston, Chester City and Vale Royal. Cheshire County Council's register of applications are included in this breakdown.

Ellesmere Port and Neston (covers Ellesmere Port Borough Council and Neston Urban District Council)

There are small cabinets with an index card for each road and property within the borough set out in alphabetical order [a demonstrative photo was provided]... As an example we have chosen [specific address redacted] as an address, to search for this a member of the public would check the index card (Ellesmere Port index cards example 5415 attached) and this would provide a list of applications relevant to that property. If a member of the public then wished to see what these applications referred to then they could check the ledgers, I have used application [application ref number redacted] as an example and have attached an extract of the details shown on the ledger (E Port copy of ledger showing 5415). In order to view this file a request would need to be made to extract the file from our offsite storage facility.

Chester City (covers Tarvin Rural District Council, Chester Rural District Council and City of Chester)

We have a plotting sheet which provides an index map of the area covered by the previous authorities (Chester 2 3 red and green plotting sheet Ref map). As an example we have chosen Mill View Primary School and application 2/3/4710. Mill View Primary School is located within the box which has 65 in green and 39 in red. These numbers relate to a plotting sheet which would have the relevant application numbers for that site. Attached is a screen shot of red 39 (2_3_39 Red screenshot) to show that there are no application numbers on this map for that site. Chester plotting sheet 2_3_65_G with box shows the site and applications numbers on that site. Please note that we have added the red box for illustrative purposes. When the site is identified then the ledgers, which are the index of applications, are used to determine if that is the part of the register they wish to view (shown on Chester copy of ledger showing 4710).

Vale Royal (covers Runcorn Rural District Council, Winsford Urban District Council, Northwich Rural District Council and Northwich Urban District Council)

The plotting sheets that cover this area are accessed electronically through the spatial mapping on the Council's internal database. To search for a particular site the search function on the database can be used (shown on VR database search 3_5_3202), as an example we have searched for [specific address redacted]. When the site is identified then the ledgers, which are the index of applications, are used to determine if that is the part of the register they wish to view (VR copy of ledger showing 3 5 3202).

Whilst a member of the public can access any individual planning entry, a member of staff would have to provide assistance to explain how to search and also due to the location of the maps that assist with locating applications within the former Chester City Council and Vale Royal Council areas.

30. The complainant may question whether the above meets the statutory requirements for such an index. However the legislation is not specific as to the form or format in which the index is retained or what steps need to be taken in order for an individual to carry out searches of the index.
31. It is not the Commissioner's role to determine whether the above meets the statutory requirement for section 36(9). However in order to make a decision on this complaint he must determine whether the council was correct (on a balance of probabilities) to say that it does hold a copy of the index which the legislation requires.
32. Given the evidence presented by the council it is clear that a member of the public can carry out searches of an index (held in the form of ledgers) in order to trace an entry in the register, albeit that the council may need to assist the individual to determine which index he needs to search for the application he is seeking and he may need access to the software necessary to identify the correct ledger to search.
33. The Commissioner has therefore decided that on a balance of probabilities the council does hold an index.

Regulation 5(2)

34. The complainant also asked the Commissioner to determine whether the council's initial delay in responding to the complainant met with the time deadlines for responding as required in Regulation 5(2). This states that:

"(2) 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."
35. The complainant made his requests for information on 1 May 2015. The council responded on 30 June 2015. This falls outside of the 20 working day period set by Regulation 5(2).
36. The Commissioner's decision is therefore that the council failed to comply with the requirements of Regulation 5(2)

Right of appeal

37. 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

38. 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.
39. 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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