

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

Date: 15 February 2016

Public Authority: Gloucester City Council
Address: Herbert Warehouse
The Docks
Gloucester
GL1 2EQ

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific planning matter. The Commissioner's decision is that, on the balance of probabilities, Gloucester City Council does not hold the requested information. He does not require any steps to be taken to ensure compliance with the legislation.

Background

2. The complainant provided the following information as background to the issue which arose as a result of a neighbouring development:
 - "1. The development was turned down when plans was [sic] submitted showing to be only four feet from 244 Stroud Road boundary.
 2. Plans resubmitted showing to be six feet from 244 Stroud Road boundary, this time passed.
 3. I called in the planning department when the buildings reached about four feet in height pointing out that the new house did not comply with the plans being too close.
 4. Their planning officer [name redacted] came to the site and told me it was two feet out and would go back and speak to the solicitors.

5. I receive a letter from [name redacted] as stated March 2012 so much technical jargon I cannot possibly understand.
 6. I felt at the time that the ombudsman would sort it out. I could not believe that they found no fault with the Planning Department.
 7. I wrote to the Planning Department requesting that they should meet me face to face at the boundary and explain why the house is only four feet from the boundary so does not comply with the plans.
 8. [Name redacted] replied stating any inconsistencies is to do with the alignment of the boundary fencing.
 9. That was the first time I had been told of any alignment, I have been trying ever since to get the distance of this alignment through the Freedom of Information so that I can go back to the Ombudsman with new information and they will look at the case again.
 10. FACT the house is only four feet from the boundary so does not comply with the passed plans as it should be six feet, the alignment must be two feet.
3. The complainant has made requests using different wordings in order to try to obtain the information she requires.
 4. The Commissioner dealt with a complaint, under case reference number FER0582280, in relation to a request for '...the distance of the alignment of the boundary fencing running along 244 Stroud Road and Bearpear Court'.
 5. The council initially refused to provide the information citing the provision for repeated requests. It referred to a letter of 16 March 2012 and scaled survey drawings (nos. JTL/003, 004, 005) which is said set out the position and alignment of the boundary fence between 244 and 246 Stroud Road. It explained that the drawings were provided to scale in order for any desired measurements to be taken. It also referred to previous request reference numbers 0096844 and 01032751.
 6. Following intervention from the Commissioner, the council sought clarification of the request providing the complainant with plans as asking for points between which she requires measurements.
 7. Having been told that the 'distance' is a length and the 'alignment' is an angle, the complainant informed the council that she wanted '...the measurement of the alignment of the boundary fencing between 244 Stroud Road and Bearpear Court'.

8. The council then informed the complainant that 'the angle of the alignment of the existing fencing and that shown on the approved drawing is approximately 1 degree over the 60 metre length of the rear boundaries to plots 1-3'.
9. As the complainant considered the above response to be meaningless, she then requested '...the distance the boundary fence was moved from the 244 Stroud Road land to the now correct boundary between 244 Stroud Road and Bearpear Court'. She informed the Commissioner that she wanted the information in yards, feet and inches.
10. At that point, the Commissioner advised the council to issue as clear a response as possible and informed the complainant that because the request has technically changed since the one she initially complained about, complaint reference FER0582280 would be closed and a new complaint would be opened if she was dissatisfied with the council's response to the distance the boundary fence was moved.

Request and response

11. As mentioned above, the complainant wrote to the council on 3 October 2015 and requested information in the following terms:

"Under the Freedom of Information I request the distance the boundary fence was moved from the 244 Stroud Road land to the now correct boundary between 244 Stroud Road and Bearpear Court."

12. The council responded on 28 October 2015 as follows:

"I can advise that the position/alignment of the fence remained unaltered as the replacement fence was instated upon the position of the former fence between Nos.244&246 Stroud Road.

In investigating the siting of the new dwellings at Barn Pear Court following your complaint, the position of the replacement boundary fence was also surveyed at that time and it was confirmed that the position/alignment of that fence remained unchanged.

The fact that the fence between the 244 Stroud Road and Barn Pear Court remains unaltered is evident from drawing No.JTL/003 which was enclosed with [name redacted] letter to you dated 16 March 2012. I have attached the drawing.

This drawing overlays the position of the fence as surveyed in March 2012 (shown in blue line) with the survey drawing which accompanied the original planning application dated September 2004 (shown in

green line). You will note from this drawing that the position of the boundary between No.244 Stroud Road and the development site is identical."

13. The complainant wrote to the council on 14 November 2015 again stating that the new property is only four feet from the boundary, not six feet, and repeated the request made on 3 October 2015.
14. On 16 November 2015 the council wrote to Mrs Hill as follows:

"With regard to your request "Under the Freedom of Information I request the distance in yards feet and inches the boundary fence was moved from 244 Stroud Road land to the now correct boundary between 244 Stroud Road and Bearpear Court.

Having reviewed all the information previously provided to you, I can advise that the Council has provided all the information held or available to the council under both Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 with regard to your request."

Scope of the case

15. The complainant contacted the Commissioner on 13 November 2015 to complain about the way her request for information dated 3 October 2015 had been handled.
16. The Commissioner wrote to the complainant on 24 November 2015 and explained that since the ICO has been involved in this matter, the council has provided two further responses to her requests for information. He said that although she remains dissatisfied with the issue, it appears that the council has provided all the recorded information it holds regarding the alignment of the fence. He explained that the FOIA is solely concerned with access to recorded information that is held by a public authority and does not address the issue of the accuracy of information and that a public authority will have complied with their obligations under the FOIA where they have provided the recorded information that they hold in relation to a request irrespective of whether this information is accurate. He also pointed out that the FOIA does not require a public authority to create information in response to a request. He noted that her letter of 13 November 2015 mentions both planning and maladministration and informed her that he cannot look into accusations of maladministration or planning issues but there may be overseeing bodies that can consider the issues she has mentioned, such as the Planning Inspectorate or the Local Government Ombudsman.

17. On 30 December 2015 the complainant wrote to the council and the Commissioner . The letters make it clear that the complainant disputes that she has been provided with the requested information.
18. The Commissioner has therefore considered whether, on the balance of probabilities, the council holds further information within the scope of the request made on 3 October 2015

Reasons for decision

Regulation 5 – Duty to make environmental information available on request

19. 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.
20. 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.
21. 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.
22. The council said that the search was based upon the unique application number and that all relevant information is held electronically and is publically available at the following links which have been provided:

Outline Planning Permission

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=04/00972/OUT>

Refused Reserved Matters Application

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=05/00991/FUL>

Approved Reserved Matters

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=07/00524/REM>

23. The council said that no information has ever been held which has since been deleted or destroyed or held in other locations and that records are destroyed 7 years after a decision.
24. 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. The council said that planning information should be held as part of the planning register.
25. The Commissioner also considered whether the council had any reason or motive to conceal the requested information. He understands that the complainant believes that there has been a breach of planning. Whilst the Commissioner is not in a position to adjudicate on such matters, he has not seen any evidence of wrongdoing surrounding its records management obligations and has not identified any reason or motive to conceal the requested information.
26. In response to the Commissioner's enquiry as to whether information is held that is similar to that requested and has the council given appropriate advice and assistance to the applicant in line with the duty contained at regulation 9 of EIR, the council replied that no further information is held.
27. The Commissioner asked the council to provide an explanation as to how its statement in a letter to the complainant dated 30 September 2015 (in response to the request for "...the measurement of the alignment of the boundary fencing 244 Stroud Road and Bearpear Court") of "The angle of the alignment of the existing fence and that shown on the approved drawings is approximately 1 degree over the 60 metre length of the rear boundaries to plots 1-3" tallies with its position that the position/alignment of the fence remained unchanged. The council explained that it has interpreted this as the measurement of the actual unaltered position of the fence and that shown on the planning drawings. It said that the angle was measured from the verification survey drawing JTL/005 (provided to the complainant) and that while the proposed drawings show the boundary fence in a different position (1 degree discrepancy), the fence between Barn Pear Court and number 244 Stroud Road was not repositioned/moved/realigned by the

developer as this would have entailed works on land outside their control. It also said that drawing no JTL/003 provided to the complainant as part of an investigation between the development site and 244 Stroud Road, showed the position of the fence has remained unchanged between the applicants survey dated September 2004 and the Council's verification survey in March 2012.

28. The complainant's issue in this case is in relation to an alleged breach of planning. She clearly believes that the new build does not comply with planning as it is two feet closer the boundary than it should be. Her request for information is an attempt to obtain evidence to take back to the Ombudsman so that her case can be reconsidered. The Commissioner can understand why the complainant wants the information requested but also considers that there may be a difference between the issue of the position of the new build and the boundary, and the distance the boundary fence was moved. As stated above, the Commissioner is not in a position to adjudicate on planning matters.
29. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further information relevant to this request. The Commissioner is therefore satisfied that, on the balance of probabilities, further information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of regulation 5.

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

Andrew White
Group Manager
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