

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 January 2016

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested information in relation to the Meon Valley Trail (the MVT). Hampshire County Council (the council) provided information in response to the request. The council provided some further information during the Commissioner's investigation, but the complainant considers that he has not been provided with all the information requested.
2. The Commissioner's decision is that the council has provided the complainant with the information it holds within the scope of his request. He has also found that the council has breached regulation 5(2) of the EIR, as it did not respond within the required 20 working days following the request being made.
3. As the information held has now been provided, the Commissioner does not require the council to take any steps.

Request and response

4. On 19 May 2015 the complainant requested the following information from the council:

"I wish to be informed whether the County Council:

(i) holds certain information as described below

(ii) if that is the case, to have access to that information.

Please be as specific as possible I would like details of a consultation carried out into plans to upgrade / renovate the Meon Valley Trail during 2013 2014.

This to include (but not be limited to):

- 1) A copy of the consultation document results*
- 2) A list of consultees*
- 3) Report of responses received*
- 4) Any other relevant paperwork."*

5. The complainant contacted the council on the 16 June 2015 to advise that he was still awaiting a response to his request.
6. On 17 June 2015, the council acknowledged the delay and advised that the response is being worked on and it will respond as soon as possible.
7. The complainant then contacted the Commissioner on the 22 June 2015 as he had still not received a response to his request from the council. Following contact from the Commissioner, the council responded on the 15 July 2015. It advised that although there is no single document which can be described as the result of the consultation, the council undertook a range of informal communications in 2013 and 2014 with interested parties. Public engagement and consultative exercises with regard to the Meon Valley Trail have taken place over many years. The council provided the complainant with a summary describing the various public engagement activities which had taken place in 2013 and 2014.
8. The council also advised that in specific response to each of the questions in the request, it was relying on regulation 12(4)(c) of the EIR to refuse to answer them – as it considered the request was formed in too general a manner. It provided advice and assistance by suggesting that the complainant may wish to resubmit his request by narrowing its scope (i.e. narrow the request down by issue) and being more specific about what information he particularly wished to obtain, including dates or the period of time relevant to the information required. It suggested that using the summary provided may assist him in doing this.
9. On the same day as the above council response, the complainant requested an internal review thanking the council for providing the consultation document as per part 1 of the request. However, he considered that the council had not responded to parts 2, 3 or 4 of his request and he set out reasons why he considered the council had not provided him with what he had requested.

10. The complainant also did not agree with the council's reliance on regulation 12(4)(c) of the EIR in considering the request was too broad.
11. The council provided its internal review on the 18 August 2015. Its review appeared to no longer be relying on regulation 12(4)(c) of the EIR and instead considered the information provided is all the recorded information it holds within the scope of the request.

Scope of the case

12. Following the internal review, the complainant contacted the Commissioner again as he was not satisfied with the council's response because he considered that it had not provided him with all the information he requested. He also says that the council has focused more on providing information about after the work began rather than prior to it, that being the consultation stage, which is what he was looking to obtain.
13. The Commissioner considers the scope of the case is to determine whether the council has provided all the information it holds within the scope of the request.
14. He will also consider whether the council responded outside the required timeframe of the request.

Reasons for decision

Regulation 5(1) of EIR – Information held/ not held

15. 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."

16. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. The Commissioner must decide whether on the balance of probabilities the public authority holds any further information which falls within the scope of the request (or was held at the time of the request).

17. The Commissioner has asked the council to review its response to this request and explain the types of searches it has carried out in order to identify what information it holds within the scope of the request.
18. The council has advised the Commissioner that searches for the information were directed to individual officers in its countryside service. It explained that these individuals would be aware of the current and recent work relating to the requested information and were able to explain where the relevant documents could be found. They also carried out searches in their email accounts for relevant details within the specified time period.
19. The council has confirmed to the Commissioner that all information relating to this request is held electronically and as far as it is aware, no information relevant to the request has been deleted or destroyed.
20. The council has also told the Commissioner that for part 4 of the request, although not stated in its internal review response, it was still relying on regulation 12(4)(c) of the EIR as it considered this part of the request to be formed in too general a manner. However, the complainant has identified to the Commissioner what other information he would have expected to have been provided.
21. The Commissioner has asked the council to consider these four parts described by the complainant in as part of its response to the Commissioner's investigation. They are set out below marked a) to d).
 - a) The complainant has stated that his request was all about obtaining details of a consultation which the council said (in public statements and in the press) had taken place *prior* to work beginning on the trail. He considers that much of the information provided to him by the council was information about what the council did *after* work began. The Commissioner asked the council if it considers the information provided was that which was in relation to held information *prior* to work beginning? And on reviewing this, has the council located any other information that was created *prior* to work beginning?
 - b) The complainant says that under "Contextual Information" (August 2013) the council mentions "various publicity". He considers that this material should have been provided and states it clearly falls within the scope of his question 4. The Internal Review simply says: "*Various Publicity Material August 2013: It is possible that the publicity related to the DfT awarding Cycle Ambition funding to the SDNPA (see [4](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229473/briefing-governments-ambition-</i></div><div data-bbox=)*

[cycling.pdf](#)) the publicity related to the grant that provided the funding for the project." The complainant states that this document does not even mention the Meon Valley Trail or even Hampshire. He asks how can the council refer to documents and press cutting yet be unable to provide them? The Commissioner has asked the council whether it holds such information and if so, can it provide this information. If not, can the council explain why it refers to it yet does not hold it?

- c) The complainant has also stated that the council says it undertook a range of public engagement and informal consultative exercises in 2013 and 2014 with interested parties yet failed to provide him with any details of these "informal consultations". He has told the Commissioner that he finds it very difficult to understand how the council cannot have details of meetings which took place (and which the council attended) yet can assert so confidently that they took place. The Commissioner asked the council to confirm whether or not it holds such information, and if not, can it explain why it would not hold this type of information?
- d) The complainant lastly states that the council has told him that the consultation is now on its website, but this was not available online at the time of his request. Can the council confirm when it placed it online and provide the complainant with either a copy of or link to it?
22. The council has provided the Commissioner with a response to each of the above, for a) it advised the Commissioner:

"In its response letter of 15 July the Council provided a timeline which clearly set out when various categories of information were provided from 2013 onwards. In order to set out the full history and context of the continuing public engagement on the issue, references were made to the fact that, for example, press releases and updates took place in 2014 and were still ongoing in 2015. Apart from this, the information provided and referred to in the response were within the timeframe requested by the complainant."

23. For b) the council has told the Commissioner:

"the timeline provided as above was clearly stated to be contextual – the Council did not say that it held recorded information in respect of all of those details, although it did provide copies where they were held. In the case of publicity on websites, it would not be usual to retain copies of all webpage

publicity where this would change on a regular basis and some information referred to was published on other websites, not just the County Councils. The MVT project was carried out jointly with the South Downs National Park Authority, so inevitably some publicity and public engagement information was provided on their website. A link to the Council's Twitter feed on the topic has been included below and provides a few comments from the feed.

https://mobile.twitter.com/TheMVT?max_id=445848901321768959 "

24. For c) the council has responded to the Commissioner stating:

"This point has already been covered in our internal review of 18 August. The relevant consultations were informal in nature. The Walk England survey report provided in June 2013 has been provided to the complainant and a copy is available on our MVT webpage. Copies of letters sent to residents in February 2014, on site signage and leaflets produced have also been provided to the complainant and are also available on our MVT webpage.

As stated in our response, the meetings referred to were Parish Council meetings, minutes of which are kept by the relevant Parish Council. Some can be accessed online as follows:-

http://www.candm-pc.gov.uk/wp-content/uploads/2015/03/April2014_000.pdf

(I note that the complainant was present at this meeting and may already have seen these minutes)"

25. Lastly, for d) the council has advised the Commissioner that:

"The consultation was posted online on 15 July 2015 and can be accessed at

<http://documents.hants.gov.uk/countryside/WalkEnglandReport.pdf>.

The website page was further updated to include additional text and photos at the end of July.

The complainant was provided with a link to the main webpage from which the report link can be accessed in our letter and it was explained that the report along with other related documents could be accessed from this page. Furthermore, we note that the complainant had already published a copy together with his analysis of the contents on his own website on 3 July 2015."

26. In addition to the above responses, the council has also explained to the Commissioner:

"no formal consultation was undertaken but that various informal communications and public engagement exercises have taken place. We have provided copies of these that are relevant to the time period requested. The response letter also set out a table of contextual information which included references to all the various types of public engagement the Council is aware of in 2013/14. Not all of these relate to information held by the Council and the letter did not state that the Council held this information – the intention in including it was to provide advice and assistance to the complainant in narrowing down or clarifying his request."

27. Following these responses, the council has confirmed to the Commissioner that the only further information it has been able to identify within the scope of the request was the twitter feed referred to in its response to b) above, but has now provided the link to the complainant during the Commissioner's investigation.
28. On review of the above, it would appear that the council has carried out its searches with the relevant departments. The fact that the council state no formal consultations took place could explain why there is less information than that expected by the complainant.
29. With this, the Commissioner is satisfied with the council's responses to his enquiries and therefore the Commissioner's decision is that the council has, after providing the link to the twitter feed, provided all the information it holds within the scope of the request.

Regulation 5(2) of the EIR

30. Regulation 5(2) of the EIR requires a public authority to respond to a request within 20 working days following receipt of it.
31. In this case, the complainant made his request on the 19 May 2015 and the council did not provide its initial response to the request until the 15 July 2015.
32. This is outside the required timeframes to respond to a request, therefore the Commissioner finds that the council has breached regulation 5(2) of the EIR.
33. As the council has now responded, he does not require it to take any steps.

Right of appeal

34. 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

35. 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.
36. 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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