

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

**Date:** 12 February 2018

**Public Authority:** High Peak Borough Council  
**Address:** Buxton Town Hall  
Market Place  
Buxton  
SK17 6EL

**Decision (including any steps ordered)**

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1. The complainant has requested recorded information From High Peak Borough Council which concerns a specific piece of land. The information requested by the complainant includes communications between Council staff, Natural England and Derbyshire Wildlife Trust. The Council disclosed information to the complainant under the terms of his request but withheld a small amount of personal data under Regulation 13 of the EIR. The complainant believes that the Council might not have disclosed all of the information it holds.
2. Having investigated this matter, the Commissioner has decided that High Peak Borough Council has, on the balance of probabilities, complied with Regulation 5(1) of the EIR, and that it is entitled to withhold the personal data of third parties in reliance on Regulation 13. The Commissioner has also decided that the Council breached Regulation 5(2) of the EIR by failing to comply with the complainant's request within the statutory twenty day compliance period.
3. The Commissioner requires the public authority to take no further action in this matter.

**Request and response**

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4. On 4 August 2016, the complainant wrote to High Peak Borough Council and, referring to his address and to his position as one of the owners of a specific piece of land, asked to be provided with:

"...all communications concerning the above land/fields from August 2015 to the present date, both written and electronic, internal and external, from any staff and councillors of High Peak Council to the following bodies and people.

1. Natural England
  2. Derbyshire Wildlife Trust (ref HP 181)
  3. [a named family], farmers of [a named farm], Dove Holes
  4. Mr and/or Mrs [named persons] of [a named farm] Chapel-en-le-Frith"
5. On 23 August 2016, the Council wrote to the complainant to advise him that it would not be able to answer his request without his further clarification and therefore as a consequence of this the Council advised the complainant that it was extending the compliance period under the provision of section 1(3) of the FOIA.
6. The complainant wrote back to the Council on 25 August and provided the following information to assist the Council in answering his request:
- "Please find attached a Derbyshire Wildlife Trust generated document with grid reference [redacted] and a map of the site at Chapel-en-le-Frith. In late October/early November 2015 a HPBC planning officer, a HPBC environment officer, a HPBC Tree Preservation Officer, [a named person] for Natural England plus several councillors (Borough and Parish), Peak Park Officials and DCC footpath team visited the site. [a named councillor] (HPBC councillor and resident of [a specified road]) is known to have been communicating with various bodies regarding this land.
- A postcode to a place beside the land would be [postcode redacted]."
7. The Council confirmed receipt of the complainant's clarification and advised him that his request would be dealt with under the FOIA.
8. On 26 September 2016, the complainant wrote to the Council to complain about its failure to respond to his request after the passing of 21 working days since he had provided the above clarification.
9. The Council immediately acknowledged the complainant's email by advising him that his request would be dealt with under the FOIA and that he would receive a response within 20 working days.
10. On 29 September the Council wrote to the complainant in response to his information request. The Council informed the complainant that:

"Having checked our files we do not appear to have any pre-application

discussions, planning applications or general enquiries relating to this land. Therefore we do not have any correspondence on file."

11. On 3 October 2016, the complainant wrote to the Council to complain about its response to his request. The complainant pointed out that there has been visits to his land by the Council's planning and environment officers, a Council HPBC arboricultural officer [whom he named and who had issued a tree preservation order], various councillors, Natural England officials, Derbyshire Wildlife Trust officials, Derbyshire Council Footpaths officials and Peak Park officials.
12. The complainant advised the Council that his land had been assigned a pre-application number, as shown on the Council's own website, and there had been a pre-application meeting about the land on 15 September 2015. The complainant asserted that it is known that [a named councillor] has been communicating with various bodies about his land and there has been in written communication with a senior manager at Natural England, asking to be kept informed by HPBC of any and all developments concerning the land.
13. The complainant expressed his disbelief in the Council's response that there is no correspondence on file and he asserted that information is therefore being withheld.
14. Again, the Council immediately confirmed receipt of the complainant's email of 3 October and advised him that his request would be dealt with under the FOIA and that he would receive a response within 20 working days.
15. On 4 October, the Council confirmed that it would review the complainant's complaint and respond to him in due course. On 19 October the Council advised the complainant that it had, "established that any information which the Council holds is likely to be related to the Council's planning and environmental sections", and that, ahead of its review, each of the Council's service managers have been asked to revisit their searches.
16. The complainant wrote to the Council on 20 October to provide further clarification of his information request.
17. On 4 November 2016, the Council wrote to the complainant to advise him of the result of its internal review. The Council advised the complainant that it had determined his request should be dealt with under the Environmental Information Regulation 2004 ("the EIR") as the information he seeks meets the definition of environmental information under Regulation 2. The reviewer advised the complainant that searches had been made by managers in a number of Council departments and it was providing him with copies of the information these departments had found. The Council made clear to the complainant that it had removed

the personal details of third parties in reliance on Regulation 12(3) and 13 of the EIR on the grounds that it would be unfair to the individuals concerned to have their personal data disclosed.

## **Scope of the case**

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18. The complainant contacted the Commissioner 21 December 2016 to complain about the way his request for information had been handled.
19. The complainant has written to the Commissioner to complain about the Council's handling of his request. He has complained about the amount of information the Council has disclosed to him and he has asserted that he knows, "there is quite a lot of information still being withheld".
20. The complainant has referred the Commissioner to discussions with Bloor Homes, "who had to instruct a solicitor to defend their position following accusations against themselves, to name just some".
21. The complainant has also drawn the Commissioner's attention discussions between the Council and Natural England about his information requests and he has provided her with copies of emails between a number of parties which concern the land in question and who are named in the above chronology.
22. In view of the complainant's concerns, the Commissioner advised him that her investigation would be focussed on determining whether the Council has handled his request for information in accordance with the EIR and specifically on what information was held by the Council at the time he made his information request.

## **Background information**

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23. The complainant has provided the Commissioner with useful background information relating to his request and subsequent complaint.
24. The complainant's request stems from a decision made by a former tenant of the land which the complainant has inherited. The former tenant entered the land into the 'Higher Level Stewardship' scheme which requires a lower level of cultivation in return for higher payments from Natural England.
25. The tenant's stewardship agreement was entered into without the complainant's agreement, and because of this, the complainant believes it is invalid and possibly fraudulent. It has resulted in the complainant entering into a dispute with Natural England which, as a result of the

tenant's agreement, now exercises some control over the complainant's land.

26. In a separate case considered by the Commissioner<sup>1</sup>, Natural England explained that the land in question is recorded by the Land Registry as being within three separate registered land titles.
27. Natural England's position is that the complainant is not an owner of the land based on the Land Registry information. This position is contested by the complainant.
28. Natural England referred the Commissioner to The Environmental Impact Assessment (Agriculture)(England)(No 2) Regulations 2006 ("EIA Regulations"). These regulations protect rural land in England that is uncultivated or semi-natural, from changes in agricultural activities that might cause damage by increasing productivity or physically changing field boundaries.
29. Uncultivated land is land that has not been cultivated in the last fifteen years by physical or chemical means. Semi-natural land includes priority habitats, heritage features or protected landscapes and is land that usually has not been intensively farmed such as unimproved grassland.
30. If a landowner wants to change rural land they need to apply for permission from Natural England who will then decide if the proposal to change the use of rural land is likely to have a significant effect on the environment. Landowners must apply for this decision (known as the EIA screening decision) before they change rural land.
31. A screening decision is needed if the proposal to affect uncultivated or semi-natural land is: by disrupting the soil surface by ploughing or rotovating; increasing the use of fertiliser; sowing seed that will increase grassland productivity; draining land; clearing existing vegetation equal to or above 2 hectares either physically or by herbicides; or increasing stock density that will result in improved vegetation from grazing.
32. Natural England has the right conduct investigations to determine whether Regulation 4 or 9 of the EIA Regulations had been breached under Part 4 Section 30(a).
33. In November 2015 Natural England was informed that the land referred to by the complainant had been subject to potentially damaging

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<sup>1</sup> FER0677441

activities including tree and scrub removal and drainage works that could have an adverse effect on the wetland habitats of the site.

34. Natural England conducted an investigation into the alleged breach of the EIA Regulations and after a number of site visits, concluded that the site contained an area of Semi-Natural habitat exceeding 2 hectares and that the drainage works had a significant environmental effect on this habitat. The work therefore fell within the protection of the EIA Regulations.

## Reasons for decision

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35. Under Regulation 2 of the EIR, environmental information is given the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
  - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;"
36. The Commissioner accepts that the information, if it is held, would satisfy the requirements of item (c) above insofar as it would record a measure which would affect land and the landscape.
37. Under Regulation 5(1) of the EIR a public authority is required to 'make available on request' information which is environmental information.
38. The Commissioner has sought to determine whether the Council holds information which the complainant seeks.
39. In making this determination, the Commissioner applies the civil test of the balance of probabilities. This test is in line with the approach taken

by the First Tier Tribunal (Information Rights) when it has considered whether information is held in cases which it has considered in the past.

40. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information which the complainant seeks. The Commissioner's investigation also included questions about the possible deletion/destruction of information which might be relevant to the complainant's request.

#### *The Council's representations*

41. On 31 August 2016, the Council sent the complainant's clarification of his request to the appropriate service area within the Council. The Head of Service signed off the responses which the service areas provided. These responses confirmed that no further information had been found relevant to the complainant's request, however a hand written note of an internal telephone conversation shows that the complainant's clarification of his request assisted the Council in retrieving relevant information. Details of the service area's responses are given below:
42. The Council's Arboricultural Officer confirmed that she only had correspondence directly with Derbyshire Wildlife Trust ("DWT") and indirectly with Natural England ("NE").
43. This same officer confirmed that she had searched her email files for exchanges which she had had with the parties named in the complainant's request. In addition to these searches, the officer checked the details held on file which are associated with the making of a specific tree preservation order.
44. These searches were considered most appropriate, as the main correspondence with the Council's partner organisations is by email and the tree preservation order would require a full consultation of interested parties. The results of any consultation would be held on file along with any correspondence relating to the tree preservation order.
45. The Council confirmed there are no other arboricultural files that relate to the site of concern to the complainant.
46. The Council's searches were carried out on its network systems. The Council searched its files for titles considered likely to be relevant to the complainant's request using terms such as 'long', 'DWT', 'Derbyshire Wildlife', 'Natural England', '[redacted name]' and '[another redacted name]'. The same search terms were used in respect of emails.
47. No searches were carried out of laptop computers or personal computers as these are not used for work relating to the Council.

48. Other than essential legal documents relating to tree preservation orders, the Arboricultural Officer confirmed that she holds no paper records.
49. The Council is unable to rule out the possibility that some emails might have been deleted. This is because emails are deleted or held in temporary files: Only those emails which are considered important would have been saved, and whilst deletion is a possibility, the Council believe that it is unlikely due to the timescale involved.
50. Generally, sent emails are held for up to 15 months and therefore at the time of the Council's initial response to the complainant's request, the emails retained on the Council's system would have dated back to July or August 2015.
51. When asked about the possible retention of information relating to pre-application identified by the complainant, the Council's Arboricultural Officer was able to recall a separate pre-application but was unable to trace any written records of it.
52. In addition to the searches carried out by the Arboricultural Officer, searches were also carried out by the Council's Corporate Services Manager. Searches were made of the Council's iLAP Planning Database using search terms in the site address and applicant fields. The terms used included following 'Warmbrook Road', 'Target Wall Fields', 'Brookside Pastures" These searches yielded no results.
53. The complainant provided the Council with a plan of the land which he is concerned about. This was useful because planning applications and discharge of conditions applications are plotted spatially on the Council's GIS system. Clicking on a site on the GIS would reveal any relevant application numbers which can then be cross referenced with iLAP.
54. The Council used the plan supplied by the complainant to search its GIS system but found no results. Similarly, the Council used the postcode supplied by the complainant to search the address field in GIS and again this yielded no results.
55. When the complainant contacted the Council to ask for an internal review, he provided a pre-application reference number. When this reference number was entered into the Council's iLAP database, it revealed a Pre Application Discussion (PAD) which was for a Proposed Residential Development of 150 Houses. The site address was described in the system as Land North of [location redacted] and the applicant was Bloor Homes.



56. At no point in his requests did the complainant refer to the site either as being located off [address redacted] or to the involvement of Bloor Homes.
57. Each pre-application ("PAD") is recorded on the Council's iLAP database and it has a corresponding folder in the shared drive on the Council's computer network known as the R Drive. This is where all relevant documentation, plans, letters, emails, etc are stored electronically. Any hard copy information or correspondence is scanned on receipt and saved in this location. All the information relating to the complainant's request which was located in the R Drive was supplied to him.
58. Enquiries were made with relevant councillors including the councillor named by the complainant in his request. At the time that the request was received, the case officer who dealt with the pre-application enquiry no longer worked for the authority. Enquiries were made of other officers within the department including the Council's planning enforcement team. However this did not yield any further information relevant to the complainant's request.
59. The Council has advised the Commissioner that its iLAP database is used to record all planning applications, pre-application enquiries, enforcement action, appeals and general enquiries. All work undertaken by the department concerned with these is logged in iLAP under a site address and an applicant name.
60. The searches carried out by the Council's Corporate Services Manager included networked resources and emails. The Council advised the Commissioner that it does not use localised storage such as laptop hard-drives. Case Officers file any email correspondence in the shared 'R' Drive.
61. The Council acknowledge that it is possible that the Case Officer may have had some unfiled correspondence still within his email inbox. The Council is unable to confirm whether this would be the case as that Case Officer left the Council over 4 months before the complainant's request was received. The Council's IT department have confirmed that email accounts and all of their content is deleted 4 months after a member of staff has left the authority.
62. The Council's IT Department has advised the Commissioner that no copies of any emails which might have been deleted are made.
63. Whilst the Council retains records of any pre-application discussions to inform its officers who dealing with subsequent planning applications, there are no statutory requirements to retain details of pre-application discussions. In this case, the Council has confirmed there is no information falling within the scope of the complainant's request which

has not been disclosed to him, which is associated with the particular pre-application.

*The Commissioner's decision*

64. To support his position that the Council must hold more information than that which it disclosed, the complainant provided the Commissioner with a CD-ROM containing a large number of files.
65. Additionally, the complainant provided the Commissioner with two email chains which reference the involvement of Chapel-en le Frith Parish Council and a third party with Natural England in respect of the disputed land.
66. The Commissioner has reviewed the information provided by the complainant. She has identified copies of emails that have been sent to or by the Council directly and emails which have passed between Derbyshire Wildlife Trust and Natural England and have been copied to several officers of the Council.
67. In addition to these emails, the Commissioner has identified a statement indicating that the Council's Arboricultural Officer had at least one telephone conversation about the contested land in which she stated that she was considering a tree preservation order and would like to discuss scrub and hedgerows – 13 April 2015.
68. Having cross-referenced the emails which the Council disclosed to the complainant with those contained on the complainant's CD-ROM, the Commissioner has found that many of the emails – though not all of them, formed part of the information disclosed under the terms of the complainant's request. There are certainly some omissions.
69. The omission of emails, and of notes of telephone conversations, is not, in itself, evidence that those pieces of information were held at the time the Council responded to the complainant's request.
70. It is clear from the Council's representations that appropriate searches were made and that they had yielded no further information. The fact that the Council did not find the omitted information, or any other information, does not invalidate or contradict the Council's statements concerning the possibility that emails and paper-based files might have been deleted or destroyed. Whether or not this has happened cannot be evidenced. What can be said is that, if such deletion/destruction did take place it would have been in accordance with the Council's retention and deletion policy.
71. On the balance of probability, the Commissioner has been drawn to conclude that the information provided by the Council represents all of the information the Council was able to find up to and including the date

of its internal review. The Commissioner has therefore decided that the Council has met its obligation to provide recorded environmental information under Regulation 5(1) of the EIR.

*Regulation 13 – third party personal data*

72. The Council has confirmed that it withheld some information from the complainant in reliance on regulation 13 as the information concerned the personal data of third parties.
73. In order to determine whether a public authority may disclose personal data under the regulation 13 of EIR, the public authority must determine whether such disclosure would contravene the first data protection principle.
74. The first data protection principle states:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at
75. In order to engage regulation 13, the information sought by the applicant must contain information which satisfies the definition of personal data provided by section 1(1) of the Data Protection Act 1990 (“the DPA”).
76. Section 1(1) of the DPA defines personal data as:

“data which relate to a living individual who can be identified (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.”
77. Here, the Council determined that it should withhold personal data comprising of the telephone numbers of one person and the email address of a second person. The Council provided the Commissioner with copies of the information disclosed to the complainant which confirmed its redactions of this personal data.
78. The Council also confirmed to the Commissioner that Natural England had asked the Council not to release the personal telephone numbers of two persons, the future employment details of one person, a person’s name in relation to his/her partner and the name and address of another person.

79. The Council took the decision that it would disclose the name of the officer at Natural England. This was because the officer was "a public worker carrying out a public function".
80. However, the personal data which the Council decided to withhold concerns private individuals who "appeared to have an interest in a controversial issue". In the Council's opinion these individuals would have a higher legitimate expectation of privacy than a public sector worker, and it was considered unnecessary to release their personal data where they had expressly asked the Council not to disclose it.
81. The Council advised the Commissioner that it had considered the conditions for processing personal data contained in Schedule 2 of the Data Protection Act and that it was unable to identify a legitimate interest of any person that could reasonably be furthered by the disclosure of these limited personal details.

*The Commissioner's decision*

82. The Commissioner has considered the personal data which the Council has withheld from the complainant. She is satisfied that the disclosure of that data would be unfair to the individuals concerned and therefore the Commissioner's decision is that the Council is entitled to rely on Regulation 13(1) of the EIR.

*Procedural matters*

83. The Council acknowledges that it failed to provide the complainant with a substantive response, following his clarification, within the twenty day compliance period required by Regulation 5(2) of the EIR.
84. The Commissioner understands that the Council wanted to undertake a comprehensive search for the information required by the complainant and that it felt it was necessary consult with relevant officers at a time when many of its officers were taking annual leave.
85. The Commissioner is sympathetic to the situation of the Council. Nevertheless, she is obliged record that the Council breached of Regulation 5(2).

## Right of appeal

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86. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

87. 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.

88. 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**