

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

Decision notice

Date: 18 June 2019

Public Authority: Middlesbrough Council

Address: P.O. Box 500
Civic Centre
Middlesbrough
TS1 9FT

Decision (including any steps ordered)

1. The complainant requested from Middlesbrough Council (the Council) information in relation to a pre-planning application meeting between the Council's planning department and Cambian PLC. The Council stated that it held no information within the scope of the request because such a meeting did not take place.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold information within the scope of the request in this case. However, by responding to the request outside of the 20 working day timeframe, the Council breached regulation 5(2) of the EIR.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 17 August 2018 the complainant requested information of the following description:

"Under the freedom of information act, I kindly ask for a copy of the minute of meeting held by Middlesbrough planning dept and Cambian

PLC or representatives prior to submission of the planning application referenced above.

Planning potential document referenced.18/4195 and Council planning dept ref 18_0533_COU-PLANNING_STATEMENT-409362

I kindly ask for the M.O.M to be sent ASAP in order for my self and others to make further response to the proposed change on the above.

I also ask guidance on which dept in the council, it is to enforce deed of covenant."

5. On 25 September 2018 the Council responded, stating that "...no pre-planning application meetings took place between Cambian PLC or representatives of Middlesbrough Council. Therefore the requested information is not held." The Council also responded on the complainant's question relating to the enforcement of deed of covenant, stating that "it would be Legal Services 'to enforce deed of covenant' if there were any legal grounds for doing so".
6. Remaining dissatisfied with the response, on 27 September 2018 the complainant asked the Council to conduct an internal review of its response.
7. On 10 October 2018, the Council sent to the complainant the outcome of its internal review. It upheld the complaint regarding the timeliness of the response to the information request. However, the Council did not change its position relating to the information requested, meaning it maintained that no information was held within the scope of the request.

Scope of the case

8. The complainant contacted the Commissioner on 16 October 2018 to complain about the way his request for information had been handled.
9. The Commissioner considers that as the requested information relates to planning matters, the requested information is likely to fall within the EIR. Therefore, she considers it appropriate to consider the request under that access regime.
10. With that in mind, the Commissioner's investigation has focussed on whether the Council has complied with regulation 5(1) of the EIR, when it stated that it did not hold any information within the scope of the request.

11. The Commissioner has also considered whether the Council responded to the request within the statutory time scale.

Reasons for decision

Is the requested information environmental?

12. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR.
13. Under regulation 2(1)(c), information on any measure that will affect, or be likely to affect, the elements of the environment referred to in 2(1)(a) or the environmental factors referred to in 2(1)(b) will be environmental information. In the present case, the requested information relates to an alleged pre-planning application meeting between the Council's planning department and an organisation. The planning process and any related activities are clearly measures that may affect several of the environmental elements and factors listed in regulations 2(1)(a) and (b). The Commissioner therefore considers the request to have been seeking environmental information under the terms of the EIR.

Regulation 5(1) - Information held/ not held

14. Regulation 5(1) of the EIR states that "*...a public authority that holds environmental information shall make it available on request.*"
15. 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 must decide whether, on the balance of probabilities, the public authority held at the time of the request any information which fell within the scope of the request.

The complainant's position

16. The complainant stated that his main concern is that "*Cambian PLC stated within their planning statement (attached) a meeting was held with Middlesbrough Council concerning the change of use of No 6 Sandy Flatts Lane from C2 to C3.*"
17. The complainant appears to be sceptical in relation to the Council's assertion that no such meeting has ever taken place.

The Council's position

18. In its response to the questions included in the Commissioner's letter, the Council stated that the request was dealt under the EIR and reiterated that it did not hold the requested information.
19. The Council informed the Commissioner that during the course of its internal review it contacted with the Head of the Planning Department to enquire whether information was held within the scope of the request. The Head of the Planning Department stated that there was no pre-planning meeting held and, therefore, he confirmed that neither he nor anybody else from this department held any information regarding this matter.
20. The Council explained that normally information of this type would be held electronically and its retention policy provides that consultation materials related to planning and development are held for 15 years after the consultation period.

The Commissioner's view

21. The Commissioner has reviewed the copies of the responses that the Council has provided to the complainant and the correspondence it had in the course of handling the complainant's requests.
22. During the course of her investigation, the Commissioner has specifically raised the issue of the alleged pre-application meeting to which the complainant refers to in his complaint.
23. The Commissioner notes that the Council in its response has reaffirmed that nobody within its planning department has held any pre-application meeting with Cambian PLC. Consequently, the Council confirmed that it did not hold information that would fall within the scope of the request.
24. The Commissioner is aware of no evidence that calls into question the Council's position that no pre-application meeting took place. Given this absence of evidence, the Commissioner accepts the Council's response on this matter and is satisfied that, on the balance of probabilities, the Council does not hold the requested information.
25. Therefore, the Commissioner does not require the Council to take any further action.

Regulation 5(2) – Time for compliance

26. Regulation 5(2) requires that a response to a request must be provided within 20 working days.

27. The Commissioner understands that the initial request was made on 17 August 2018 and the initial response to the complainant was only given on 25 September 2018. From the evidence presented to the Commissioner in this case, it is clear that, by failing to issue a response by 14 September 2018, the Council has breached regulation 5(2).

Right of appeal

28. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF