

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

**Decision notice**

**Date:** 30 November 2020

**Public Authority:** Huntingdonshire District Council  
**Address:** Pathfinder House  
St. Marys Street  
Huntingdon  
Cambridgeshire  
PE29 3TN

**Decision (including any steps ordered)**

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1. The complainant has requested various pieces of information from the council relating to particular properties, to which the council responded that the information was not held for some aspects and that they could neither confirm nor deny other items.
2. The Commissioner's decision is that Huntingdonshire District Council does not hold any information in scope of the request. However, the council responded outside of statutory timescales and therefore breached regulation 5(2) of the EIR.
3. The Commissioner does not require any steps.

## Request and response

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4. On 15 February 2020 the complainant wrote to Huntingdonshire District Council ('the council') and requested information in the following terms:

*"Attached is a copy of a "map" showing No 41 to No 51 High Street, Ramsey PE26 1AB. Most if not all the answers to my requests for information are held in Huntingdonshire District Council Planning Files 7600135FUL and 7600637FUL, Cambridgeshire County Council's Huntingdon Records Office Files KR/R34/6/2 and KR/R45/1/11 focused on the [redacted property and locations] and Cambridgeshire Constabulary's Command and Control Files unlawfully stopping [redacted person] from using his Private Accommodation Road not exclusively.*

*1. Can you or any other person or organisation identify and mark the position of No 41, 43, 45, 47, 49 and 51 [redacted street address] on this map?*

*2. Can you or any other person or organisation identify and mark the position of the access / egress, over [redacted location], serving No 41, No 43 , No 45 and the [redacted location]?*

*3. Can you or any other person or organisation identify and mark [redacted location] access/egress to No 47 and No 49 leading to [redacted location] serving the [redacted properties] and Burial Plot and to the cottages at [redacted location].*

*4. Was it [redacted person] who lived at [redacted address] or some other person who held the keys for the gates leading to [redacted address]?*

*5. Can you or any other person or organisation identify and mark the Accommodation Road serving solely the [redacted properties] over [redacted locations]?*

*6. Which person or organisation made a Decision / Ruling to place a 2 Ton Weight Limit Sign at the entrance of [redacted location] and why?*

*7. Which two or three of the Planning Conditions in Planning Applications 7600637FUL and 7600637FUL , as detailed in the attached letter from [redacted person] to Huntingdon District Council dated 13 May 1977, are ultra vires planning conditions and why?*

*8. Which person or organisation made a Decision / Ruling for the private land to be used as a public car park after No 45 and No 47 and*

*the [redacted location] at [redacted locations and properties] were demolished?*

*9. Do you or any other person or organisation know the name and address of the current legal owner of the former [redacted properties] and Burial Plot Site?*

5. The complainant initially contacted the Commissioner to complain that the council had not provided a response.

6. The Commissioner wrote to the council on 6 July 2020 asking it to respond to request items 4, 6, 8 and 9. The Commissioner advised the complainant and the council that she did not consider items 1, 2, 3, 5 and 7 to be valid requests for information.

7. The council responded on 17 July 2020. In regard to each item the council:

[4] - refused to confirm or deny holding the information.

[6] - denied holding the requested information.

[8] - denied holding the requested information.

[9] - refused to confirm or deny holding the information.

8. The complainant requested an internal review on 30 July 2020.

9. Following an internal review the council wrote to the complainant on 22 September 2020. Regarding each item the council:

[4] – upheld its position to neither confirm nor deny but then also advised that a search of the council tax record on the revenues and benefits system which holds data from 1993 showed no details are held for that person at that address. Furthermore, the council advised information may be accessible via the Electoral Register which could be viewed by coming to the offices at Pathfinder House.

[6] – upheld its position that the information is not held.

[8] – upheld its position that the information is not held. Advised that the highways agency may hold the information.

[9] – upheld its position to neither confirm nor deny, but also applied the exemption at FOIA section 21 – information accessible by other means.

10. In response to the Commissioners investigation, the council reconfirmed its position to the complainant. In regard to each item the council advised that it:

[4] – had considered this request in two parts. Firstly, relating to the person living at the address, it advised that information was incorrectly provided previously. The final position is to neither confirm nor deny holding the information. Secondly the council advised it does not hold information in relation to "*who held the keys...*" , it stated that the information may need to be sought from the owner of the address and that ownership is likely to be held by the Land Registry.

[6] – upheld the position that the information is not held.

[8] – upheld the position that the information is not held.

[9] – changed the position to state that the information is not held.

## Scope of the case

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11. The complainant contacted the Commissioner on 23 September 2020 to advise that they remained dissatisfied with the internal review response from the council. Specifically, the complainant considers that the council holds all of the requested information, which should be made publicly available.
12. In regard to request item [4], the Commissioner considers that the question relates to who has ownership of the keys to the gates, rather than confirmation of who lives at the specified address. As such the Commissioner concludes that the council's response relating to residency at the address was not required. The Commissioner has therefore disregarded the council's position to neither confirm nor deny whether it holds information relating to residency at the address.
13. The Commissioner considers the scope of the case is to establish whether the council it holds the requested information in scope of [4], [6], [8] and [9].

## Reasons for decision

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### Regulation 2(1) - Environmental Information

14. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition

in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.

15. Regulation 2(1) of the EIR defines environmental information as information 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...emissions...and other releases into the environment, likely to affect the elements 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;..."
16. The Commissioner considers that, as the information requested in this case is related to planning matters, it is highly likely to affect the elements and factors of the environment as defined at regulations 2(1)(a) and 2(1)(b).
17. The Commissioner therefore considers that the information falls within the definition of environmental information at regulation 2(1)(c).
18. The Commissioner finds that the information is environmental information and should be considered under the EIR.

**Regulation 5(1) – Duty to make environmental information available on request**

19. Regulation 5(1) of the EIR states that: *"a public authority that holds environmental information shall make it available on request."* This is subject to any exceptions that may apply.
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. She 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. She will also consider any reason why it is inherently likely or unlikely that information is not held.

21. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that *"there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records"*. It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner applies in this case.
22. In discussing the application of the balance of probabilities test, the Tribunal stated that, *"We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."* The Commissioner has therefore taken the above factors into account in determining whether or not further information is held, on the balance of probabilities.

#### *The complainants view*

23. The complainant states that:
- The council holds all the requested information on microfiche.
  - It is definitely held because some time ago the complainant attended the council's offices and saw the information there.
  - The complainant contends that issue is that the council have poor records management.
  - All of the documents should be publicly available and easily accessible.

#### *The Council's response*

24. In relation to [4] the council advised the Commissioner that it does not maintain lists of individuals who hold keys to a particular location, for example they could be held by caretakers, owners or agents. It advises that such information would need to be sought from the owner of the address.

25. In relation to [6], the council advised the Commissioner that:

- It does not make decisions on any highway related issues. The County Council Highways Authority is responsible for maintaining roads and public footpaths and would, therefore, deal with such width, height and weight restrictions.
- For completeness, however, it had carried out a search of planning records and found no information in scope of the request was held.
- The planning records are kept permanently as per the council's retention schedules, which is in adherence to statutory requirements. All historic information is held on microfiche (being anything pre 1999 but post 1948). Anything prior to microfiche (1948) is unrecoverable due to the deterioration of records over time.
- For conducting a search on microfiche, a blue card system is used, the index cards are split into parishes then road names; in this case the road name was searched against.
- The council found no records confirming the person or organisation who made a decision or ruling to place a 2 Ton Weight Limit Sign at the entrance of [redacted address].

26. In relation to [8], the council advised the Commissioner that:

- The council does not make decisions on private land, however, for any material change of use, the planning authority may have been required to be consulted.
- The council therefore carried out searches on internal planning systems for internal records and historic files and found no information in scope of [8].
- The complainant had been advised, in the internal review response, that the Highways Agency may hold this information as they deal with roads and pathways.
- It had also advised that Ramsey Town Council could be of assistance.

27. In relation to [9], council advised that it does not hold ownership records, it only holds information relating to planning. This type of information is likely to be held by Land Registry.

*Conclusion*

28. In coming to a conclusion, the Commissioner has considered the meaning of the request items, the view of the complainant and the council's responses.
29. The Commissioner considers the phrasing of [4] somewhat opaque, however it can be clearly seen to be a request for records of who holds the keys to a gate at the specified location.
30. The Commissioner has been presented with no information relating to why they council should hold this type information, nor why it would hold the information for the specified address in particular.
31. The Commissioner finds the council's response that it does not hold records of such information reasonable, and that it is more likely to be known by someone linked to the location.
32. In relation to [6] the Commissioner is satisfied that the council undertook adequate searches for any related information in scope of the request. Moreover, that it has confirmed there to be neither statutory nor business reasons to hold the requested information because it does not make decisions on any highway related issues.
33. In relation to [8] the Commissioner is satisfied that the council undertook adequate searches for any related information in scope of the request.
34. In relation to [9] the Commissioner finds the council's response that it only holds planning information and does not hold records of property or land ownership reasonable. The Commissioner also notes that the request is for the "*current legal owner*", therefore if it were the case that related information was held in any planning files, there would be no way of knowing whether or not that was the current owner.
35. The Complainant has made their case very strongly to the Commissioner that the council holds the information, stating that they have previously viewed the information at the council offices.
36. It has been necessary for the Commissioner to balance this view against the arguments forwarded by the council. The Commissioner has been unable to find any reasons to explain why the information should exist and why the council may be withholding it.
37. Having considered the council's responses, and in the absence of any tangible evidence to the contrary, the Commissioner is satisfied that, on the balance of probabilities, the council does not any information within the scope of the request items .



38. The Commissioner therefore considers that the council complied with its obligations under regulation 5(1) of the EIR.

39. No steps are required.

**Regulation 5(2)**

40. Regulation 5(1) requires a public authority that holds environmental information to make it available on request.

41. Regulation 5(2) requires this information to be provided to the requester within 20 working days following receipt of the request.

42. The complainant made the request for information on 15 February 2020. The council gave a response on 17 July 2020, following an intervention from the Commissioner.

43. The Commissioner therefore finds that the council has breached regulation 5(2) by failing to respond to the request within 20 working days. However, as the response was issued no steps are required.

## Right of appeal

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44. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

45. 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.
46. 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**  
**Head of FOI Casework and Appeals**  
**Information Commissioner's Office**  
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