

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

Decision notice

Date: 6 May 2022

Public Authority: Borough Council of King's Lynn & West Norfolk
Address: Kings Court
Chapel Street
Kings Lynn
PE30 1EX

Decision (including any steps ordered)

1. The complainant has requested information associated with a planning application. Borough Council of King's Lynn & West Norfolk ('the Council') released information with personal data redacted. The complainant considers that the Council holds further, relevant information.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities the Council disclosed all the relevant and non-exempt information that it holds and has complied with regulation 5(1) of the EIR. The Council was in breach of regulation 5(2) and regulation 14(2) however, as it did not disclose information or issue a refusal within 20 working days of the request.
 - The Council was also in breach of regulation 11(4) of the EIR as it did not provide an internal review within 40 working days of the request for one.
3. The Commissioner does not require the Council to take any corrective steps.

Request and response

4. On 14 December 2020 the complainant wrote to the Council and requested information in the following terms:
 - “1) Copies of your communications with Councillor [redacted] – and any others in connection with this matter.
 - 2) Copies of any communications with others in connection with this matter – including responses received.
 - 3) Copy of response from Councillor [redacted].
 - 4) A transcript of the ZOOM ‘Chat-Box’ dialogue being exchanged whilst both applications were being presented (This is important since it was clear from [redacted]’s warning intervention, that ‘damaging’ and undisclosed communications were taking place).
 - 5) A copy of Councillor [redacted]’s e-mail that [redacted] sent to every Member of the Committee on Monday Evening, expressing [redacted] disgust and embarrassment at the other Members prejudicial conduct and behaviour.
5. The complainant subsequently submitted the following additional request:

[6] I also require you to provide an additional FULL TRANSCRIPT (as described in Item 1 above) of the ‘chat-box’ text in relation to [redacted] preceding Planning Application under Planning Reference: [redacted] – The transcript is for the full meeting on the 2 November 2020.”
6. On 10 February 2021 the Council responded. It released information within scope of all the parts of the request with personal information redacted.
7. The complainant requested an internal review on 24 February 2021 and the Council provided one on 23 June 2021. It upheld its response.

Scope of the case

8. The complainant contacted the Commissioner on 30 April 2021 to complain about the way their request for information had been handled.
9. The Commissioner has first considered whether the requested information can be categorised as environmental information which the Council should have handled under the EIR. He will then consider

whether the Council holds any further information relevant to the request, and the timeliness of its response and internal review.

Reasons for decision

Is the requested information environmental information?

10. Information is 'environmental information' and must be considered for disclosure, if held, under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
11. Regulation 2(1)(a) defines environmental information as information that concerns the state of the elements of the environment, including water, soil, land and landscape.
12. Regulation 2(1)(c) defines environmental information as information on measures including plans and activities affecting or likely to affect the elements and factors referred to in (a).
13. The requested information in this case broadly concerns a planning application. As such, the Commissioner is satisfied that the information can be categorised as environmental information under regulation 2(1)(c) of the EIR. This is because the information is associated with plans and activities affecting or likely to affect the state of the elements of the environment, such as water, soil, land and landscape.

Regulation 5 - duty to make environmental information available on request

14. Under regulation 5(1) of the EIR and subject to a number of EIR provisions, a public authority that holds environmental information shall make it available on request.
15. Under regulation 5(2), information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
16. The complainant told the Commissioner that they consider the Council holds further relevant communications between the named Councillor and others; that they had not received any communications they requested (including any responses received) and had not received full transcripts of the Zoom 'Chat-Box' for both planning applications. The Commissioner passed these concerns to the Council and asked it to address them.
17. In its submission to the Commissioner, the Council has advised that it has reconsidered the request for information, its internal review response and the information it compiled and provided when it

responded to the request. During its investigations, the Council also contacted the complainant to clarify the information that they believe is missing. In addition the Council says it asked its officers to review the initial request in order to ascertain if any information may have been omitted.

18. The Council has explained to the Commissioner that when it received the request, it followed its usual procedure for requests for information. It circulated the request to the relevant officers and councillors that would hold the requested data. The relevant officers therefore searched their email accounts, 'YouTube' recording of the meeting in question and file correspondence and retrieved the Zoom chat, in compliance with the request. The requested information, apart from the Zoom chat, was mostly held in email correspondence and the Council says that it is likely that any search results would be from email searches.
19. The Council says it consulted the Monitoring Officer and officers within the Planning team about the request. The officers had been engaging with the complainant at the time. When conducting the internal review, all of the relevant documents were made into a paper file and this was thoroughly searched. The Council says it cannot confirm what search terms officers used but has nonetheless confirmed that it retrieved all the information relevant to the request.
20. The Council summarised its submission by confirming its position that it provided to the complainant all of the information it retrieved [with personal data redacted]. However, it also advises that based on its most recent contact with the complainant, it may be possible that the complainant did not see the full extent of the Council's attachments as these were in the body of the email. The Council says it will therefore re-issue the information to the complainant just in-case they did not see the full extent of the attachments.
21. Finally, the Council said in its submission that if Councillors held private conversations within the 'Teams' chat function, these would not be retrievable from officers' searches of the full Zoom transcripts.
22. The Commissioner asked the Council to clarify this last point. On reconsideration, the Council advised the Commissioner that its reference to 'Teams' had been an error. The Council confirmed that there had been no 'Microsoft Teams' chats at the time of the meeting and that it had provided all of the requested Zoom chat transcript, with personal data redacted.
23. The Commissioner considers that the Council has given sufficient and adequate thought to the request and that appropriate officers have conducted appropriate searches of relevant areas of the business. The Council has also sought to engage further with the complainant to

identify what further information they expect the Council to hold and whether it had overlooked any relevant information. The Council has not located any further information. The Council had responded to the request by email on 10 February 2021 but has advised it will re-send this correspondence to the complainant in case they initially overlooked the email's attachments. Notwithstanding that point, on the balance of probabilities the Commissioner finds that the Council disclosed all the relevant and non-exempt information that it holds on 10 February 2021 and complied with regulation 5(1) of the EIR.

24. The complainant submitted their request on 14 December 2020 and the Council did not communicate the non-exempt information until 10 February 2021. The Council therefore breached regulation 5(2) of the EIR.

Regulation 14 – refusal of request

25. Regulation 14(2) of the EIR places an obligation on a public authority to issue a refusal in respect of exempt information as soon as possible and no later than 20 working days after the date of receipt of the request.
26. As above, the complainant submitted their request on 14 December 2020 and the Council did not issue a refusal in respect of the withheld personal data, until 10 February 2021. The Council therefore breached regulation 14(2) of the EIR.

Regulation 11 – representations and reconsideration

27. Under regulation 11(4) of the EIR, a public authority must provide an internal review as soon as possible and no later than 40 working days after the date of receipt of the request for a review.
28. In this case, the complainant requested an internal review on 24 February 2021 and the Council provided one on 23 June 2021. This was well outside the 40 working day requirement and therefore the Council was in breach of regulation 11(4) of the EIR.

Right of appeal

29. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.

31. 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

Cressida Woodall
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Wycliffe House
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