

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

Date: 14 September 2022

Public Authority: South Derbyshire District Council
Address: Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 0AH

Decision (including any steps ordered)

1. The complainant requested information relating to three planning applications. South Derbyshire District Council (the Council) provided some information within the scope of the request. The complainant disputed that it satisfied his request.
2. The Commissioner's decision is that the Council has conducted reasonable searches for the requested information which would have located further information, if it was held. He has therefore concluded that, on the balance of probabilities, the Council does not hold any further information in the scope of the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 22 December 2021, the complainant wrote to the Council and requested information in the following terms:

"Please could you provide all the information that SDDC [South Derbyshire District Council] hold in respect of each of the following

planning application references [followed by three reference numbers]”.

5. The Council responded on 17 January 2022. It provided a link to where the information could be found.
6. The complainant expressed dissatisfaction with that response in an email to the Council, the subject line of which was:

“Request for Planning File Information – [Reference 1, Reference 2, Reference 3] - Missing Documents”.
7. Following an internal review the Council wrote to the complainant, copied to the Commissioner, on 4 February 2022. It stated that it had provided all the information it holds on this matter.

Scope of the case

8. In an email copied to the Council, the complainant contacted the Commissioner on 3 February 2022 to complain about the way his request for information had been handled.
9. He was dissatisfied with the Council’s handling of his request.
10. As is his practice, the Commissioner wrote to both parties setting out the scope of his investigation. Noting that the complainant considers that there are ‘documents of communication’ missing from the information provided by the Council, he told the complainant that his investigation would look at whether the Council holds any further information within the scope of his request.
11. In subsequent correspondence, the complainant clarified the specific documents he considered were missing from the information provided. Those documents appear to be dated 26 September 2013.
12. During the course of the Commissioner’s investigation, the Council confirmed that that the information already provided is the extent of all the information the Council holds.
13. The analysis below considers whether, on the balance of probabilities, the Council holds any further recorded information falling within the scope of the request.

Reasons for decision

Regulation 12(4)(a) – information not held at the time of the request

14. Regulation 12(4)(a) of the EIR provides an exception from the duty to make information available if the authority does not hold the requested information at the time of the request.
15. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that 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.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
17. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. He will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, he will consider any other information or explanation offered by the public authority which is relevant to his determination.

The complainant's view

18. While acknowledging that the Council did provide him with some relevant information, the complainant told the Council:

"The following documents of communication have been excluded and they need to be provided. As planning permission has been granted and executed there is no consideration to make in respect of any of objections raised and furthermore any letters from objectors can have their signatures redacted as per other documents".

19. He told the Commissioner that, given that this type of information has been provided before, he cannot see any reason why it has not been provided.

The Commissioner's view

20. The Commissioner accepts that the complainant specified, in correspondence with the Council and with the Commissioner himself, exactly what information he considers has been withheld.
21. As is his practice, the Commissioner asked the Council to revisit its handling of the request. He did so with a series of detailed questions. These included asking about the searches that had been undertaken and the search terms used.

22. In its submission, the Council explained that records relating to determination of planning applications are stored electronically, either in the current live planning system from 2019 to current, or on a planning archive pre 2019. It confirmed there are no other data archives to check.
23. It provided details of the searches that had been undertaken and the search terms used. It also provided the Commissioner with screenshots of the results of those searches.
24. The Council confirmed that the searches would have located the specific documents that the complainant considered were missing from the information provided.
25. The Commissioner's role is not to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it.
26. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no further relevant information. However, as explained earlier in this notice, the Commissioner is required to make a judgement on whether further information is held on the civil standard of the balance of probabilities.
27. In reaching his decision in this case, the Commissioner has taken account of the arguments put forward by the complainant and the explanations provided by the Council.
28. The Commissioner accepts that the requested information is clearly of interest to the complainant and that he considers that further information should be provided to him.
29. However, the Commissioner has found no evidence which would indicate that any further information is held by the Council that is relevant to the request.
30. As a result, the Commissioner has decided that, on the balance of probabilities, there is no additional recorded information held by the Council that is relevant to the complainant's request.
31. Although regulation 12(4)(a) is a qualified exception, the Commissioner's position is that it is not necessary to consider the public interest. To do so would be illogical because the public interest cannot favour disclosure of information which is not held.
32. The Commissioner is therefore satisfied that the Council has complied with the requirements of regulation 12(4)(a) of the EIR.

Section 1 general right of access

33. Section 1 of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him”.

34. In light of his decision above, and to the extent that any information within the scope of the request does not comprise environmental information, the Commissioner is also satisfied that the Council has conducted reasonable searches in the areas most likely to hold the requested information. His decision is that, on the balance of probabilities, no further recorded information is held. He is therefore satisfied that the Council has complied with the requirements of section 1 of FOIA in this case.

Right of appeal

35. 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

36. 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.
37. 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

Laura Tomkinson
Group Manager
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Wycliffe House
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Wilmslow
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