

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

Date: 16 December 2022

Public Authority: West Northamptonshire Council

Address: The Forum
Towcester
NN13 6AD

Decision (including any steps ordered)

1. The complainant requested from West Northamptonshire Council (the Council) information relating to The Red House Nursing Home site.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold information falling within the scope of the request. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 29 July 2021, the complainant wrote to the Council and requested information in the following terms:

"I request both minutes, emails & notes for any formal - informal meetings between [names redacted] Any Representative of Unistruct and/or their representative with any of the planning committee, especially [names redacted] after permission was granted on The Red House Nursing Home sight Syresham."

4. The Council responded on 18 August 2021 and stated [names redacted] (to the second part of the request) are not members of the Planning Committee. These Council Officers working in the Council's planning team, stated they had not had any formal or informal meetings with any of the listed names nor any representative of Unistruct and/or their representative after permission was granted on the site. The Council therefore confirmed that it does not hold the information requested as no meetings had taken place.

5. The Council also confirmed only five Councillors remain that were members of the South Northamptonshire Council Planning Committee. It provided the complainant with the names of the remaining five Councillors and said that all five of them stated they had not had any formal or informal meetings with any of the names listed in the request, nor any representative of Unistruct and/or their representative after permission was granted on the site. The Council said it does not hold any such minutes, emails or notes because no meetings had taken place.
6. Following the complainant's request for an internal review, the Council provided its internal review response and maintained its original position that it does not hold information relating to the request.
7. On 25 October 2022 the complainant contacted the Commissioner to complain about the Council's handling of her request for information dated 29 July 2021. Although the Commissioner considered there had been an undue delay in bringing her complaint to the ICO, following further correspondence, the complaint was accepted for investigation.
8. On 8 November 2022 the Council provided the complainant with its internal review response. The Council said that from its records, it confirmed no information was held in addition to what had been disclosed to the complainant relating to previous FOI requests on this subject. For clarity, the Council detailed the complainant's first request to South Northamptonshire Council, completed November 2020; her second request to the Council completed May 2022 and the third request to the Council ("which was an internal review") completed July 2022. During the Commissioner's investigation, the Council was asked to confirm that the only information provided to the complainant were the names of the remaining five Councillors and the Council confirmed this.
9. The following analysis focuses on whether, on the balance of probabilities, the Council holds information within scope of the request of 29 July 2021, and whether it complied with regulation 12(4)(a) of EIR.

Reasons for decision

Regulation 12(4)(a) – information not held

10. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information "to the extent that it does not hold that information when an applicant's request is received".

11. The complainant disputed the Council's response that no meetings had taken place and therefore it does not hold the information requested. In scenarios such as this, where there is some dispute between the public authority and a complainant as to whether the information is held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. 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.
12. The Commissioner considered the explanation within the Council's response (18 August 2021) to the complainant. The Council had also said South Northamptonshire Council ceased to exist and formed part of the new West Northamptonshire Unitary Council as of 1 April 2021. An election had taken place in relation to the new West Northamptonshire Unitary Council on 6 May 2021. It confirmed only five Councillors remain that were members of the South Northamptonshire Council Planning Committee, and in view of this, the Council was only able to provide the complainant with the names of the remaining five Councillors.
13. The Commissioner notes that information (minutes, emails or notes) is not held as no meetings had taken place, and the remaining Councillors confirmed they had not had any formal/informal meetings with any of the listed names (within the request) nor any representative of Unistruct and/or their representative after permission was granted on the site.

The Commissioner's conclusion

14. The Commissioner sees no reason to doubt the Council's explanation. There is no contradictory evidence available to the Commissioner that indicates the Council's position is inaccurate.
15. Having considered all the circumstances of this case, the Commissioner has concluded that, on the balance of probabilities, the Council does not hold information falling within the scope of the complainant's request of 29 July 2021. The Commissioner is therefore satisfied that the Council has complied with the requirements of regulation 12(4)(a) of the EIR.

Right of appeal

16. 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: 0116 249 4253

Email: grc@justice.gov.uk.

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

17. 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.
18. 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

Phillip Angell
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SK9 5AF