

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 May 2022

Public Authority: Great Wyrley Parish Council
Address: Great Wyrley Community Centre
Landywood Lane
Great Wyrley
Staffordshire WS6 6JX

Decision (including any steps ordered)

1. The complainant requested information from Great Wyrley Parish Council ("Great Wyrley") about a historic land transfer. Great Wyrley, which had previously provided the complainant with some information, stated that no further information was held. It drew the Commissioner's attention to some information it had obtained from a neighbouring parish council, but stated that, in its view, it was not required to consider this for disclosure.
2. The Commissioner's decision is that the requested information is "environmental" and has considered the complaint under the EIR. Having considered the information provided to Great Wyrley by the neighbouring parish council, he has determined that this should have been considered for disclosure, and Great Wyrley is therefore in breach of regulation 5(1) of the EIR. He is satisfied that, beyond this, on the balance of probabilities, Great Wyrley does not hold any further information.
3. The Commissioner requires Great Wyrley to take the following step:
 - Consider whether the information described at paragraph 51 of this notice can be disclosed to the complainant, and issue an appropriate response to him, under the EIR.
4. Great Wyrley must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 October 2020, the complainant wrote to Great Wyrley to request information of the following description:

“As you now know the situation of adverse possession of the drive, which has not been concluded... The adverse possession is the road which is next to [redacted] Garage... I am entitled for all legal documentation, names of the people and councillors involved and any paperwork which is involved.”

6. On 3 November 2020 Great Wyrley responded as follows:

“In reply to your letter dated 30th October, it is my understanding, after consultation with the parish clerk, that all relevant documentation relating to the adverse possession of the area of road alongside [redacted] Garage was forwarded to you on the occasion of your original request, should you require copies of these this could be arranged at a later date. As you will appreciate as of Thursday 5th November in line with Government guidelines the office at the Community Centre will need to close...”

7. On 2 December 2020, the complainant clarified his request as follows:

“In reply to your email on 3rd November 2020. I would like to request all legal documents again. As stated in my email 30th October 2020. I am looking for all transactions between the council and the clerk ([name redacted]) and the owner of [redacted] Garage [name redacted] from 2003 and legal documents. You do not need to send me the minutes of the meeting from June 2003 or indenture of 1896.”

8. On 14 December 2020, Great Wyrley responded and stated: “My understanding is you are in position of all relevant information and there is no further evidence of any written communication between [redacted names].”

9. After some further correspondence, the complainant formally requested an internal review on 31 March 2021.

10. On 10 May 2021, the complainant received a letter from Southern Staffordshire Shared Legal Services (South Staffordshire District Council being the principal local authority for the relevant location). Regarding the land transfer, it stated this was “a private law matter” between the

parties, and not a matter for the parish council. It also stated that the complainant's requests would no longer be responded to, because they were an "unreasonable call on parish council resources".

Scope of the case

11. The complainant contacted the Commissioner on 23 February 2021 to complain about the way his request for information had been handled. It was following this that he formally requested an internal review.
12. During the Commissioner's investigation, it was established to the Commissioner's satisfaction that the complainant did not wish to receive any information he had already been provided with, and wished to focus on whether any further information, falling within the scope of his request, was held by Great Wyrley.
13. The Commissioner notes that the land in question (which is a strip of land to the side of an access road) is used by a garage/car servicing business in various ways, and particularly for parking customers' cars. Since the information, therefore, relates to activities which are likely to affect the elements and factors of the environment, he considers that, if held, it would fall within the definition of environmental information at regulation 2(1)(c) of the EIR¹.
14. The scope of the Commissioner's investigation has been to determine whether, on the balance of probabilities, Great Wyrley holds any information, falling within the scope of the request, which it has not already provided to the complainant.

Reasons for decision

Procedural matters: regulation 5(1) and regulation 12(4)(a) EIR

15. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.
 16. 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".
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¹ <https://www.legislation.gov.uk/uksi/2004/3391/regulation/2>

17. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making his determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held, in cases which it has considered in the past.
18. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether further information is held, and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is held.

The complainant's view

19. The complainant provided the Commissioner with supporting information, including documents, which explained the background to his request. An associate of the complainant has also provided supporting information. The background is set out here, since it is relevant to the Commissioner's considerations as to whether Great Wyrley holds further information.
20. The complainant explained that a cemetery, and also a particular property, are accessed by means of a road which runs alongside a garage business ("the garage"). He became aware that part of the road (a strip, adjacent to the garage) had become part of the registered title to the garage in 2003, meaning that ownership of the strip then lay with the garage.
21. The complainant considered that the usage of this strip, by the garage, obstructed access to the cemetery and to the property, due to the parking of cars there.
22. The complainant explained that, in his view, the strip of land should never have been included in the registered title to the garage and should have remained as part of the access road, been maintained as such, and kept clear.
23. After making enquiries, he became aware that one of the garage's joint owners had sworn a statutory declaration in March 2003, stating that their tenants (who operated the garage business) had used the strip of land for many years, and that it had indeed once been fenced off, and had subsequently been concreted over.
24. The complainant's enquiries also revealed that three separate authorities – Great Wyrley, the neighbouring parish council ("Cheslyn Hay") and South Staffordshire District Council ("SSDC") – were formally notified by the Land Registry in May 2003, prior to registration, and asked whether

they objected to the strip of land being included in the title to the garage. The reasoning for this seems to be that the Land Registry was unsure as to the ownership of the access road, which has also been described as an old "coffin path". The complainant's understanding is that, whilst the garage building is within the parish of Cheslyn Hay, the access road to its side, including the strip, lies within Great Wyrley.

25. Despite Cheslyn Hay objecting to the proposed registration, on the basis that it believed the strip constituted part of the access to the cemetery and was a public right of way, the statutory declaration was apparently accepted by the Land Registry, which registered the land as part of the garage's registered title.
26. As referred to previously, the complainant has made a previous information request to Great Wyrley. The Commissioner has been unable to ascertain the date of this request or its wording. However, Great Wyrley has confirmed that, on that occasion, it provided the complainant with a copy of the clerk's report and a set of minutes from 4 June 2003. These documents record that Great Wyrley had received notice of the intention to register the strip of land, from the Land Registry. The clerk's report records as follows: "On the face of it there appears to be no reasoning for this Council to object", and the minutes record that it was resolved that: "no objection be lodged, provided there is no obstruction to the Parish Council's right of access".
27. The complainant is concerned that, since (in his understanding) the access road belonged to Great Wyrley, and considering the obstruction being caused to users of the cemetery, Great Wyrley chose not to object to the registration. As noted above, the neighbouring parish council Cheslyn Hay did, itself, object.
28. The complainant therefore considers that more documentation must exist, to explain the circumstances leading up to the statutory declaration being sworn by the owner, and explaining why Great Wyrley elected not to object to the registration of the strip of land as part of the garage.
29. In particular, because the owner had not lived in the area for many years, and because the statutory declaration was supported by photographs of the site, he questioned whether there may have been collusion between Great Wyrley and the tenant and/or owner.
30. He also explained that he was informed verbally, by an officer of Great Wyrley, that some pages of correspondence were held.

31. In the complainant's view, Great Wyrley is likely to have had some part to play in the statutory declaration being sworn by the owner, and he considers that the public should be made aware of this.

Great Wyrley's position

32. Great Wyrley has explained that it became aware of the complainant's concerns about the strip of land a number of years ago (the Commissioner understands that this may have been around 2015, when concerns were raised over the proposed removal of barriers to the cemetery carpark), and it subsequently made some enquiries as to what had happened back in 2003.
33. The current clerk has explained that the current council both made enquiries and carried out searches. Other than the clerk's report and minutes, it did not uncover any documents or records relating to the situation in 2003.
34. The clerk explained that her enquiries included telephoning the Land Registry, and that her understanding of any exchanges between Great Wyrley and the Land Registry in 2003, is limited to what she was informed, by telephone.
35. Specifically, Great Wyrley has advised the Commissioner: "the Parish Council confirms that it does not hold any correspondence from the Land Registry from 2002 to 2003 relating to this land."
36. On being informed by the Commissioner that copies do, evidently, exist of a Land Registry notification which was sent to Great Wyrley in May 2003, and Great Wyrley's response, the clerk asserted that neither of these documents was held by Great Wyrley at the date of the complainant's request. The only reference to the matter which she had located was contained in the report and minutes, which had already been provided to the complainant.
37. Great Wyrley informed the Commissioner that, during or around 2017, in the course of its enquiries, it obtained some copy correspondence and other documents from Cheslyn Hay. It considers that these are likely to be the pages which its officer is said to have referred to, verbally.
38. However, Great Wyrley considered that it was not within its "gift" to consider these for disclosure, as they were provided for consideration only, by a different public authority. The Commissioner has considered this, further on in this notice.
39. Great Wyrley has confirmed the searches that it carried out for information. It states that it "went through the entire archives held by Great Wyrley Parish Council and could find no reports or copies of any

communication regarding this matter with the Land Registry or anyone else... The Parish Council can confirm that it has searched its archives on more than one occasion very thoroughly indeed and there is no further documentation to be found."

The Commissioner's decision

40. The Commissioner notes that, since approximately 2017, Great Wyrley has carried out searches and enquiries for information relating to the events of 2003. On receiving the complainant's request, it carried out further searches of its archives. He is satisfied that logical and appropriately-targeted searches were made.
41. He notes that Great Wyrley has acknowledged that it holds some further information, obtained from Cheslyn Hay in approximately 2017, which he has considered in paragraphs 45-51 below.
42. Regarding whether any other information may be held, the Commissioner notes that, in 2003, Great Wyrley was not routinely storing information electronically, and was corresponding primarily by letter rather than email. In his view, this makes it less likely that relevant information would, at the date of the request, be held, since paper records are unlikely to have been retained over such a long period. Whilst it may be regrettable that Great Wyrley has not retained copies of correspondence with, for example, the Land Registry, it is not surprising, in view of the time which has elapsed.
43. He also notes the extent of searches and enquiries which have been carried out, and the efforts made to locate relevant information and understand the background. He is satisfied that further information, if held, would have been revealed by these searches.
44. Regarding the information provided to Great Wyrley by Cheslyn Hay ("the Cheslyn Hay information"), the Commissioner notes that Great Wyrley understands that it was not required to consider this for disclosure. It has not claimed that any exemption or exception covers this information. Rather, it appears to consider that, because the information was provided to it for perusal and to assist with its own enquiries, it was "not held" for the purposes of FOIA/EIR.
45. The Cheslyn Hay information comprises the following:
 - 1) Historic sale particulars relating to garage building (1952)
 - 2) Statutory declaration dated 26 March 2003, with plan and photographs
 - 3) Letter from Cheslyn Hay to Land Registry dated 5 June 2003

- 4) Solicitors' letter to Land Registry dated 11 June 2003
 - 5) Letter from Land Registry to Cheslyn Hay dated 23 June 2003
 - 6) Letter from Cheslyn Hay to Land Registry dated 7 July 2003
 - 7) Letter from SSDC to Cheslyn Hay dated 17 July 2003 (with map)
 - 8) Letter from SSDC to Cheslyn Hay dated 18 July 2003
46. The Commissioner disagrees that the information listed in the previous paragraph is "not held" by Great Wyrley for EIR purposes and did not fall to be considered for disclosure. Despite it having been provided by a different organisation, the information is plainly held by Great Wyrley.
 47. Having considered the wording of the complainant's clarified request and the subject matter of the listed documents, the Commissioner is satisfied that the documents fall within the scope of the complainant's request for "legal documents", which is a broad term.
 48. He therefore finds Great Wyrley to be in breach of regulation 5(1): the duty to provide environmental information on request.
 49. In these circumstances, the Commissioner is empowered to order a public authority to consider the information it holds for disclosure, and order it to issue a fresh response in respect of the information, as required by the EIR.
 50. However, the Commissioner notes that the complainant has already obtained a number of the listed items by other means (specifically, items 2), 3) and 4)). Whilst it is regrettable that he had to go to those lengths, the Commissioner considers that it would not serve any useful purpose to order Great Wyrley to consider those particular items.
 51. He therefore orders Great Wyrley to consider the following documents for disclosure, and to issue a response in respect of them, to the complainant, which complies with the requirements of the EIR:
 - The documents listed in paragraph 45 above and numbered 1), 5), 6), 7) and 8).
 52. Great Wyrley must take this step within the time-frame referred to in paragraph 4 of this notice.
 53. The Commissioner is satisfied, on the balance of probabilities, that no further information within the scope of the complainant's information request, beyond that listed in paragraph 45, was held by Great Wyrley at the date of the complainant's request.

Right of appeal

54. 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

55. 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.
56. 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
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