

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 February 2023

Public Authority: Horsham District Council
Address: Parkside
Chart way
Horsham
West Sussex
RH12 1RL

Decision (including any steps ordered)

1. The complainant requested from Horsham District Council ("the Council") information relating to a planning application. The Council disclosed held information. The complainant believed that further information was held. During the course of investigation, the Council acknowledged that its original searches had been deficient, and that further information had since been identified.
2. The Commissioner's decision is that the Council does hold further information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must issue a fresh response to the request following searches aimed at identifying all the information held within its scope.
4. The Council must take these steps 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 13 May 2022, the complainant wrote to the Council and requested information in the following terms:

"I request to make a FOIA application in regards to the planning application at: Brinsbury Fields (DC/17/0177).

I require all correspondence (whether by email, letter or electronic messaging) between the applicants for planning permission DC/17/0177 and/or their agents, and the officer (s) processing the application, from the date of submission of the application to the date of the decision being made."

6. The Council responded on 7 July 2022. It confirmed that information was held and stated that it was publicly accessible through the Council's planning application system (and provided a URL to access it).
7. On 15 July 2022, the complainant challenged the Council's response on the basis that it was incomplete.
8. Following an internal review, the Council wrote to the complainant on 12 September 2022. It stated that further searches had been undertaken, revealing three additional documents, which is disclosed subject to some redactions under the exception provided by regulation 13 (personal information) of the EIR.

Reasons for decision

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

9. 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".
10. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.

11. In this case, the complainant has stated that they believe that the Council had not identified and considered all information in response to their request.
12. During the course of the investigation, the Council informed the Commissioner on 31 January 2023 that further information had been identified and would be reviewed.
13. Therefore, the Commissioner's decision is that on the balance of probabilities the Council does hold further information falling within the scope of the request.
14. The Commissioner requires the Council to issue the complainant with a fresh response to their request following searches aimed at identifying all the further information held within its scope. All further information falling within the scope of the request should either be disclosed to the complainant, or an adequate refusal notice should be provided.

Other matters

15. The Commissioner reminds the Council of the importance in ensuring that appropriate searches are undertaken in respect of an information request.
16. The Commissioner has published full guidance for public authorities on compliance with the EIR. This guidance can be accessed at:
<https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/>

Right of appeal

17. 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

18. 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.
19. 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

Daniel Perry
Senior Case Officer
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