

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 January 2023

Public Authority: Hastings Borough Council
Address: Hastings Town Hall
Queens Square
Hastings
TN34 1TL

Decision (including any steps ordered)

1. The complainant has requested information held by Hastings Borough Council (the council) regarding the redaction of enforcement information contained within representations published on the planning pages of the council's website.
2. The Commissioner's decision is that, on the balance of probabilities, the council has provided the complainant with all the information that is held that is relevant to the request.
3. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

4. The complainant submitted representations to the council about a particular planning application. Whilst the council then published the complainant's representations on the planning pages of its website, it redacted certain references made to a previous enforcement case.
5. The complainant wrote to the council on 29 May 2022, to enquire as to why their representations had been published in a redacted format.

6. The council responded, advising that the action it had taken “was a judgement based on our approach to redaction as set out on the Council’s website.” The council went on to say that the full content of the complainant’s representations would be made available to the case officer making the recommendation on the planning application.
7. On 6 June 2022, the complainant then wrote to the council and requested information in the following terms:

“Under ‘EIR’ legislation, please can you confirm which section of the Council’s ‘Redaction Policy’ allows you to redact information that is relevant to an open planning application, just because it refers to closed enforcement cases.”
8. The council’s response of 5 July 2022, included the following information:

“The Planning Comments section on our website is guidance, not policy. It is not an exhaustive list related to what will be redacted. In this instance, the reasons for redaction have been explained in your recent stage 1 complaint response.

The Council holds no other information, other than those contained in the link the officer sent you.”
9. The complainant then requested an internal review, and the council’s response of 25 July 2022, stated that it was of the understanding that the complainant was requesting “to view the paragraph within our policy for redacting information.”
10. The council went on to provide the complainant with a link to the information published on its website: ‘[Comment on a planning application in Hastings](#).’ It confirmed that the Planning Services team follow the ‘Criteria for Redaction’ section when considering the redaction of information contained within representations made in respect of planning applications.
11. The council advised the complainant that it had already explained that this information is guidance on redacting information, rather than a policy, and that the case officer had made redactions to their letter containing representations as they considered that parts of its content were not suitable for publication.

Scope of the case

12. The complainant has raised a number of concerns about the way in which the council has handled their request. They have complained about the additional content included within the council's responses; they state that some information was not directly relevant to the terms of their request, and that the council referred to the stage 1 complaint response which was issued after the request was made.
13. The complainant has also stated that they have not been provided with the information that they have requested, and also refer to the council's failure to initially provide a link to the guidance on redaction published on its website.
14. The Commissioner would not wish to criticise a public authority for providing additional information that they believe might be helpful to the complainant, as long as they ensure that they are also complying with their obligations under the EIR when providing such responses.
15. Furthermore, the internal review is an opportunity for a public authority to review its handling of the request and, where necessary, revise its position. In this case, the council did provide a link to the guidance on redaction which is available on its website in its internal review response to the complainant.
16. The Commissioner therefore only intends to consider whether, on the balance of probabilities, the council holds any additional information that is relevant to the complainant's request.

Reasons for decision

17. Regulation 5(1) of the EIR states that "a public authority that holds environmental information shall make it available on request." This is subject to any exceptions that may apply.
18. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to establish what information within the scope of the request it held, and any other reasons offered to explain why further information is not held. He will also consider any reason why it is inherently likely, or unlikely, that further information is not held.

19. 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.
20. The council, in its responses to the complainant's request, referred to guidance published on its website which sets out the criteria for the redaction of comments made in respect of planning applications. This guidance includes examples of types of information where redactions might apply, but also states that this is a 'non-exhaustive list.' In the Commissioner's view it is therefore made clear that there will be additional circumstances where the council might regard it to be appropriate to make redactions to representations before they are published.
21. In this instance, the council advised the complainant that the response it had provided to their Stage 1 complaint had explained that the council officer had taken into account the published guidance and used their own judgement when redacting information contained within the representations that the complainant had submitted. Whilst this is not the information requested, it provides some clarification as to why the council does not hold additional information (to that which is accessible on its website) that is relevant to the request.
22. Should the complainant disagree with the action taken by the council officer regarding the redactions to their own representations before they were published, then they may wish to consider pursuing this further via the appropriate channels.
23. Having considered all the information available, the Commissioner has found no evidence to indicate that any further information relevant to the complainant's request should be held, or would be likely to be held, by the council.
24. It is therefore the Commissioner's view that, on the balance of probabilities, the council has provided all the information held that falls within the scope of the complainant's request.

Right of appeal

25. 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

26. 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.
27. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF