

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

**Date:** 14 March 2023

**Public Authority:** Isle of Wight Council  
**Address:** County Hall  
Newport  
Isle of Wight  
PO30 1UD

**Decision (including any steps ordered)**

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1. The complainant has requested information about the drainage scheme for a planning application. The above public authority ("the public authority") provided some information, but the complainant believes more is held.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has provided all the information it holds in recorded form.
3. The Commissioner does not require further steps to be taken.

**Request and response**

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4. On 22 November 2022, the complainant wrote to the public authority and requested information in the following terms:  
  
"A copy of the external drainage expert's report mentioned by yourself in the above complaint case...  
  
"Emails between Russell Chick, Oliver Boulter and Neil Youngs (Island roads)  
  
"Any other emails between Russell Chick, Oliver Boulter, other council Staff members and any other Island road employee, Manager or

Director concerning the drainage at land North of Wackland Lane. Again as these emails will be about drainage there will be no need for redactions and I will obviously challenge any that are present.”

5. The public authority responded on 2 December 2022. It stated that the information it held was already available on its planning portal, but provided copies anyway.
6. The complainant challenged the extent of the information that was held. However, following an internal review the public authority upheld its previous position.

### **Reasons for decision**

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7. As it is information relating to planning matters, the Commissioner believes that the requested information is information on a measure affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR – thought this does not make it any more or less likely that the public authority holds further information.
8. The public authority informed the Commissioner that no “report” as such had ever existed. It had received comments from an external drainage expert via an email and this email had already been disclosed.
9. The Commissioner pointed out to the public authority that the email it was referring to had been sent from the Council to the agent of the applicant and referred to earlier correspondence – which had not been disclosed or made available on its planning portal.
10. The public authority explained that it had carried out an extensive search of its server in order to try to locate the email in question, but that this had been unsuccessful. It stated that it had retained the “relevant information” from the email, but no copy of the email itself. All emails not otherwise archived (such as by uploading to the planning portal) are wiped from its server after six months in accordance with its retention policy.
11. It is not the Commissioner’s role to determine what information a public authority ought to hold – only what it does, as a matter of fact, hold. However, where there are good reasons for believing that particular information should be held, a public authority will need to provide equally good reasons in order to demonstrate that it does not hold that information.

12. Given that it related to a planning application and, in particular, to a planning application submitted by one of the public authority's own councillors, the Commissioner is somewhat surprised that the public authority did not choose to preserve an original copy of what appears to be an important email. Without access to the original, it is impossible to say whether the information the public authority has retained is an accurate reflection of the email as a whole. The public authority has therefore left itself open to an accusation that it may have failed to retain important information – which it would be unable to refute, regardless of how fair that accusation might be.
13. However, the Commissioner is required to make a judgement on the facts and the facts are that, despite having carried out extensive searches of its server, the public authority has been unable to locate the requested email. The Commissioner notes that the email must have been created on or before 16 May 2022 – and that was more than six months prior to the date of the request.
14. Therefore, whether or not the public authority ought to hold such information, on the balance of probabilities, the Commissioner is satisfied that it does not.

## **Right of appeal**

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15. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**