

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **6 December 2023**

Public Authority: **West Northamptonshire Council**

Address: **The Guildhall
St Giles Street
Northampton
NN1 1DE**

Decision (including any steps ordered)

1. The complainant requested information about noise monitoring undertaken for a specific location since 2015. West Northamptonshire Council ("the Council") stated that no information was held for the majority of the requests (specifically requests 1, 2, 3 and 5).
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the information sought by requests 1, 2, 3 and 5, and has otherwise complied with request 4.
3. The Commissioner does not require further steps.

Request and response

4. On 6 June 2023, the complainant wrote to the Council and requested information in the following terms (the numbering has been added by the Council in its subsequent response):

"1. Please supply noise monitoring locations, dates, times and durations in the following villages

Clipston
Arthingworth
Great Oxendon

for events at Kelmarsh Hall from 2015 onwards.

2. Please list the events monitored, and licensed events where monitoring was not considered necessary, giving reasons for the latter.

3. I require WNC to tell me in each case who owns the data obtained.

4. Please advise me of any research carried out by, or under the aegis of, Daventry District Council into possible noise pollution from events at KH in connection with planning application DA/2009/0116.

5. It would be helpful if the monitoring information from 2015 onwards could be set out something like this:

2015

Number of events monitored:

Number of events not monitored:

Event title, date, and event duration:

Dates, times, and durations of monitoring for this event in:

Clipston:

Arthingworth:

Great Oxendon:

[and so on for each year]

I am aware that some events were cancelled in years affected by COVID"

5. The Council responded on 12 July 2023. In respect of requests 1, 2, 3 and 5 it indicated that the information was not held. In respect of request 4 it appears to state that information is held and provided the following response:

“There is one record of a ‘event noise’ related planning enforcement complaint connected to events at Kelmarsh Hall. This is from 2022, it was investigated and found that there was no breach of planning controls.”

6. Following an internal review, the Council wrote to the complainant on 11 August 2023. It maintained that its earlier response was correct and stated that “The Council does not hold the information that you are requesting, and we have applied R12(4)(a) Information not held...”. The Council also appears to provide advice and assistance about the wider matter, by advising how to submit a complaint to the Council about the substantive matter (i.e., by requesting a ‘Premises Licence Review’).

Scope of the case

7. The complainant contacted the Commissioner on 22 August 2023 to complain about the way their request for information had been handled, and specifically that the Council had failed to provide “data on noise monitoring”.
8. The Commissioner confirmed that his investigation would consider the Council’s position under regulation 12(4)(a) – to which the Council had referred to in its response.

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. When there is some dispute between the information held by a public authority and the information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) 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).

11. 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.

The complainant's position

12. The complainant has argued to the Commissioner that their request seeks "data on noise monitoring", and that the Council has refused to provide this information on the basis that it belongs to another party.

The Council's position

13. The Council has explained to the Commissioner that the requests relate to a site called 'Kelmars Hall' ("the site") at which events are run. The Council has stated that this site is neither owned or run by the Council, and that only the landowner is responsible (as part of their licensing terms) to monitor noise levels on a routine basis. As such, the Council is not involved in the routine monitoring of noise levels at the site, and the Council does not hold therefore hold the information that would allow it to respond to the complainant's requests, which effectively seek a comprehensive history of monitoring at the site since 2015.
14. The Council has further explained to the Commissioner that whilst other information (noise data collated by the site) may be held by it, this is voluntarily provided by the site on an occasional basis to the Council to demonstrate its compliance with the licensing terms.

The Commissioner's conclusion

15. The Commissioner has considered both the Council's and complainant's positions, in conjunction with the phrasing of the request.
16. Firstly, and in respect of request 4, the Commissioner considers that the Council has both confirmed, and provided, the information sought by this request by disclosing that it has considered 'one' complaint about noise at the site. The complainant does not appear to dispute this request, and the Council has explained to the Commissioner that it has consulted with the Environmental Protection team in providing its response. As such there is no evidence available to the Commissioner that suggests additional information may be held in relation to this request. The Commissioner is therefore satisfied that the Council has complied with request 4.
17. Secondly, and in respect of requests 1, 2, 3 and 5, the Commissioner perceives that the information sought is a comprehensive history of noise monitoring (or lack of it) at the site for events since 2015. The Commissioner notes that request 5 specifies the way that the

complainant would like the information to be presented to them. The Commissioner further notes that the requests appear to be based on the premise that the Council is responsible for routine noise monitoring at the site or is otherwise receiving it from the site for all held events.

18. In such a scenario, the Commissioner must consider whether the Council holds the underlying information (the 'building blocks') that would allow it to provide the information that is sought by these requests – which is a history of noise monitoring at the site since 2015.
19. Having considered that the Council does not hold responsibility for routine noise monitoring for the site, and does not take any steps to do so, the Commissioner is satisfied that the Council does not hold the 'building blocks' that would allow it to provide the requested information.
20. Whilst the complainant argues that they seek the 'data' that the Council has been provided by the site, and the Council has acknowledged that some such data is held, the Commissioner does not – having reviewed the requests - consider that this is what has been requested. The Commissioner has provided advice to the complainant in 'Other matters'.
21. The Commissioner therefore accepts that, on a balance of probabilities, the Council does not hold the requested information and was therefore correct to rely on regulation 12(4)(a) for requests 1, 2, 3 and 5.

Public interest test

22. Technically, regulation 12(4)(a) contains a public interest test. However, the Commissioner cannot conceive of a public interest argument that would require a public authority to disclose information that it did not hold.

Other matters

23. The Commissioner notes that the complainant wishes to seek any data (which the Commissioner assumes will be noise recordings or other raw data) that has been provided by the site on an occasional basis to the Council. The Commissioner notes that the complainant remains free to make request for this information, and should they do so, should clearly indicate that they seek any data that has been provided by the site to the Council. However, the Commissioner observes that if this information was originally provided by the site to the Council on a voluntarily basis, and the site has not agreed to its disclosure, then the information would seemingly fall under the exemption provided by

regulation 12(5)(f) of the EIR – although will be subject to a public interest test.

24. The Commissioner also reminds the Council of the benefit of providing clear and structured responses to information requests. This is particularly important in cases as this where requests are phrased as 'questions', or where the Council is providing wider advice and assistance (under regulation 9 of the EIR). Ensuring that any response clearly confirms or denies that information is held, and that any advice and assistance is clearly headed as such, allows a complainant to understand the Council's position under the legislation, and ensures that any subsequent complaint to the Commissioner is clear.

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

Daniel Perry
Senior Case Officer
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Wycliffe House
Water Lane
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