

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

Date: 22 May 2024

Public Authority: Mid Sussex District Council
Address: Oaklands
Oaklands Road
Haywards Heath
West Sussex RH16 1SS

Decision (including any steps ordered)

1. The complainant requested information about Burgess Hill Train Station developments. Mid Sussex District Council (the "Council") disclosed some information and confirmed that further information was not held.
2. The Commissioner's decision is that the Council correctly confirmed that the information requested, beyond that disclosed to the complainant, was not held and that regulation 12(4)(a) applies but that it failed to issue a proper refusal notice and breached regulation 14(3).
3. The Commissioner does not require further steps.

Request and response

4. On 10 October 2023 the complainant wrote to Mid Sussex District Council (the "Council") and asked for the following information:

"What are the exact plans and schedule for the Burgess Hill Train Station developments? Furthermore, in what way if any will the planned Transport Hub effect the Chanctonbury Allotments and what evidence is there that it will?"
5. On 12 October 2023 the Council provided an initial response which directed the complainant to information on its website. On 8 November 2023 the Council provided a further response which disclosed additional information to the complainant.
6. On 9 December 2023 the complainant asked the Council to review its handling of their request. The Council provided the outcome of its internal review on 7 February 2024. This confirmed that it held no further relevant information.

Scope of the case

7. On 7 February 2024 the complainant contacted the Commissioner on to complain about the way their request for information had been handled.
8. The Commissioner has considered whether the Council disclosed all the relevant information that it holds to the complainant.

Reasons for decision

Is the requested information environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other

releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
10. The requested information relates to prospective developments. The Commissioner is, therefore, satisfied that the information is on measures as defined in regulation 2(1)(c). For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(a) of the EIR – Information held/ not held

- 11. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
- 12. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
- 13. 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).
- 14. The complainant has stated that they have repeatedly asked the Council "What are the exact plans and schedule for the Burgess Hill Train Station developments? Furthermore, in what way if any will the planned Transport Hub effect the Chanctonbury Allotments and what evidence is

there that it will?" but that the Council has "refused" to provide relevant information. The complainant considers that the Council "...must have the information available in order for allotment holders to be told that they will eventually lose the Chanctonbury Allotments site, despite the Neighbourhood plan clearly stating all current sites will be kept".

15. The Council has confirmed to the Commissioner that proposals for development at Burgess Hill station are longstanding and the site was identified as a development site within the Council's adopted Mid Sussex Local Plan in 2004 for a mixed use housing scheme. It explained that the adopted ('made') Burgess Hill Neighbourhood Plan (2016) builds upon the Local Plan allocation and contains a similar policy that supports redevelopment at Burgess Hill Station and surrounding area.
16. The Council has explained that, due to deliverability issues, the site has not yet been developed. It confirmed to the Commissioner that in 2022, the Council consulted on a new Local Plan which again allocated the site for redevelopment, this time with a revised boundary that incorporated the Chantonbury Allotment site. The District Plan Review was subject to a second round of consultation in 2024 and continued to propose this site.
17. The Council confirmed that this information is in the public domain and has been subject to all legal and regulatory processes. It explained that the District Plan Review has not been adopted by the Council – it is still subject to examination by an independent Planning Inspector, receipt of a satisfactory Inspector's Report, and then adoption through the Council's formal governance arrangements.
18. The Council explained that an allocation within a Local Plan or Neighbourhood Plan is different to a planning application for development: An allocation determines only the principle of development and sets out criteria that must be met should a planning application follow. It confirmed that, during the Local Plan making process, the level of precise detail is not always known nor submitted to the Council.
19. The Council explained that there are several landowners for the site in question, one of which is the Council itself. It confirmed that the site is currently progressing through the Local Plan process, therefore, the level of detail the requestor is seeking simply does not currently exist. The Council has explained that, in both its roles as landowner and planning authority, it does not hold any exact plans, schedule, or assessment of the impact on allotments aside from that already in the public domain and provided to the complainant. It confirmed that further exact details will only be known if and when a planning application is

made - this information will form part of the application and therefore be a matter of public record on the public planning register.

20. The Council explained to the Commissioner that all correspondence, plans, internal notes/memos and consultant studies relating to Local Plan site submissions is held within a "Site History" folder held on a shared drive. The Council confirmed that, in handling the request, the folder relating to this site was searched and the information requested is not held.
21. Having considered the explanations provided by the Council, the Commissioner is satisfied that it has carried out sufficient searches to establish if the information the complainant is seeking is held. In view of its explanation regarding the ongoing nature of decisions regarding the site, the Commissioner is also satisfied that it would be unlikely that these searches would locate information which would satisfy the complainant's request.
22. The Commissioner has no evidence to dispute the Council's explanations and he finds it reasonable to conclude that, on the balance of probabilities, the Council holds no further information within the scope of the request and that regulation 12(4)(a) of the EIR applies.

Procedural matters

Regulation 14 - refusal of request

23. If a request for environmental information is refused by a public authority, it should issue a requester with a refusal notice which complies with regulation 14.
24. Regulation 14(3)(a) requires refusal notices to shall specify the reasons not to disclose the information requested, including any exception relied on under regulations 12(4), 12(5) or 13.
25. In this case, although the Council confirmed that the information was not held, its refusal notice failed to specifically cite regulation 12(4)(a). The Commissioner has, therefore, concluded that the Council breached regulation 14(3). He does not require it to take any steps.

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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