

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 7 November 2007**

**Public Authority:** Mid Suffolk District Council  
**Address:** Council Offices  
131 High Street  
Needham Market  
Ipswich  
IP6 8DL

### Summary

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The complainant inspected information on a planning application at the public authority's offices, but then submitted a written request for all information relating to it but not generally available for public inspection. The public authority informed the complainant that no further information was held, which was the basis of the complaint to the Commissioner. The Commissioner found that there was no further information held, but the public authority had responded outside the 20 working day response time required by the Environmental Information Regulations 2004.

### The Commissioner's Role

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1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

### The Request

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2. On 3 September 2006 the complainant requested the following information from the public authority:  
  
"all material held by you in any such file(s) on planning application [reference redacted] that is not generally available for public inspection at the council offices

and which does not specifically fall within the limited and defined exemptions provided by the Act.”

3. On 11 October 2006, the public authority responded to the complainant as follows:

“There is no confidential file kept with regard to this or indeed any other planning applications. What you saw is what existed at the time you came in to view the file.”

4. It is worth pointing out at this stage that the complainant referred to his visit to view the file as having taken place in the week beginning 28 August 2006.

## The Investigation

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### Scope of the case

5. On 20 November 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the public authority held additional information which had not been provided in response to the request.
6. The complainant added that his neighbour had visited the public authority's offices and was refused access to documents in a planning application file with a similar but slightly different reference. The complainant claims that the public authority had told his neighbour that the refused documents were confidential.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology

8. On 13 August 2007, the Commissioner wrote to the public authority asking for the following information:
  - A) Confirmation whether any further information is held in response to the request
  - B) Explanation of where the public authority searched to provide the information to the complainant
  - C) Confirmation whether the complainant's neighbour or any other person was refused access to documents on planning application [reference removed] and, if so, which documents were refused and why
9. On 5 September 2007, the public authority wrote to the Commissioner providing the following information on elements A, B and C of the Commissioner's letter of 13 August 2007:

### **Element A**

10. The public authority confirmed that no further information was held. It stated that confidential material is generally not held on planning applications, except in very limited circumstances, where the main case file is clearly marked as such. Papers likely to be withheld would be papers regarding a related enforcement case or financial information where an exemption under the Local Government Act 1972 would be claimed. Neither applies in this case and there is only the working case file.

### **Element B**

11. The public authority responded that the working file with the reference requested by the complainant consisted of a paper file and further loose papers in a plastic crate. Normally there is only a case file, but more than the normal amount of correspondence was generated due to the complexity of this particular case. Therefore, the public authority used a plastic crate to help manage this. When checking through the plastic crate, a draft report was found for another separate case and was subsequently removed.

### **Element C**

12. The public authority responded that it could not establish which member(s) of staff saw either the complainant or his neighbour, but imagines that the removal of the draft report outlined above caused the confusion.

## **Analysis**

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### **Whether the information is environmental**

13. The information (a working case file) relates to a planning application and can therefore be described as information on plans for intended redevelopment, which are likely to affect land, one of the elements of the environment. The information therefore falls within the definition of environmental information provided by Regulation 2(1)(c) of the EIR.

### **Whether there is any further information held**

14. The public authority has explained that the working file with the reference requested by the complainant consisted of a paper file and further loose papers in a plastic crate. The Commissioner is satisfied that all the information relevant to the planning application requested is contained in the working case file, which has been provided to the complainant. Furthermore, the Commissioner has asked the complainant for evidence to support his claim that further information is held, but the complainant has not provided such evidence. Therefore, the Commissioner is satisfied that there is no further information held.

## Late response

15. Although not specifically raised by the complainant, the Commissioner has noted that the public authority did not provide a response to the request of 3 September 2006 until 11 October 2006, which is outside the 20 working day response time required by the Act. However, as the information has been provided to the complainant, there are no steps which the Commissioner can now require the public authority to take. However, he would remind the public authority to ensure that it responds within 20 working days following receipt of requests in future or enforcement action may be taken.

## The Decision

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16. The Commissioner's decision is that the public authority dealt with the following element of the request in accordance with the requirements of the EIR:
- The public authority provided all the information in accordance with Regulation 5(1)
17. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the EIR:
- The public authority responded later than 20 working days following receipt of the request and did not therefore comply with Regulation 5(2)

## Steps Required

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18. The Commissioner requires no steps to be taken.

## Right of Appeal

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19. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 7<sup>th</sup> day of November 2007**

**Signed .....**

**Jane Durkin  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal annex

### **Regulation 2(1)** In these Regulations –

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements;

**Regulation 5(1)** Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

**Regulation 5(2)** Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.