

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 October 2015

Public Authority: Breckland Council
Address: Elizabeth House
Walpole Loke
Dereham
NR19 1EE

Decision (including any steps ordered)

1. The complainant has made a request to Breckland Council ("the council") for information about meetings held between the council and a third party about the agreement of a noise management plan. The council confirmed that no information was held, which the complainant disputed.
2. The Commissioner's decision is that no recorded information is held. However the council breached regulation 5(2) by failing to provide a response to the information request within 20 working days.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 12 July 2014 the complainant wrote to the council and requested the following:

"Please can you provide me with copies of the minutes of the meetings that resulted in Breckland Council's agreement with [redacted third party] as per the FOI act."
5. The council responded on 14 August 2014 and confirmed that no relevant information was held.
6. Following wider correspondence between the complainant and the council as part of a corporate complaint, the council maintained its position that no relevant information was held on 10 December 2014.

Scope of the case

7. The complainant contacted the Commissioner on 29 March 2015 to contest the authority's response.
8. The Commissioner therefore considers the scope of this case is the determination of whether the council is likely, on the balance of probabilities, to hold information relevant to the request.
9. The Commissioner is aware that there is likely to have been significant correspondence between the complainant and the council's Environmental Protection Team about the substantive matter, and that this may have resulted in confusion about information is sought by the request. For the avoidance of doubt, this decision will consider the information request made on 12 July 2015 as it is worded.

Reasons for decision

Is the information environmental?

10. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the factors referred to in 2(1)(b), will be environmental information. The requested information relates to the agreement of a noise management plan. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

Regulation 5(1) – Duty to make information available on request

11. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions or exclusions that may apply.

The complainant's position

12. The complainant is concerned about noise emissions from the Snetterton Circuit, which is a race track near to the requestor's home. As such, the complainant has requested the minutes of any meetings between the council and the third party that owns the race track which led to the agreement of a noise management plan.
13. The complainant has provided the Commissioner with the first page of minutes deriving from a meeting held on 27 May 2010 by the

'Snetterton Circuit Liaison Group'. The complainant considers this is evidence that relevant meetings were attended by the council and that recorded minutes are held that would fall within the scope of his request.

The council's position

14. On 8 May 2015 the Commissioner wrote to the council to request its position in respect of the request, in addition to details of any searches it had undertaken for relevant information.

The context of the substantive matter

15. The council has advised the Commissioner that the substantive matter that the request relates to is a noise management plan that is currently implemented by the third party and periodically reviewed by the council's Environmental Protection Team. The council considers that the request seeks minutes of any meetings which led to the noise management plan being agreed. However, the council's position is that no such meetings were held. This is because the noise management plan was not agreed in meetings between the council and the third party, but instead was proposed by the third party as "*a statement of best practicable means*" in its appeal against a noise abatement notice that was served by the council. The statement was subsequently turned into a noise management plan and included within a planning application made by the third party in 2008, which was subsequently approved through the planning process. To provide further confirmation of this, the council has referred the Commissioner to the minutes from meetings of the Development Control Committee on 21 July and 22 September 2008, which the Commissioner notes are publically available at <http://www.breckland.gov.uk/content/committee-meetings>.
16. The council has further elaborated that whilst meetings between the Environmental Protection Team and the third party are currently organised annually, this has only been since the implementation of the noise management plan so that its effect can be reviewed. These meetings are informal and no minutes are recorded. The council has confirmed this is routine procedure within the Environmental Protection Team, which has informal meetings with relevant third parties on a frequent basis in order to fulfil its role.
17. The council has also provided its position in respect of the minutes that are held by the complainant and which derive from the 'Snetterton Circuit Liaison Group'. The council has detailed that the meetings of this group were previously facilitated by the council and included the third party and local residents. However, the responsibility for facilitating these meetings has since passed to local parish councils, and the council

has confirmed that the minutes held by the complainant derived from the last meeting that was facilitated by the council. The council has further advised that these meetings were only undertaken upon the noise management plan being implemented, and were not part of the process by which it was formed. The council has further clarified that it is not aware of these minutes being retained by the council, as the meetings were organised by the then Assistant Director for Environmental Health and Housing, who has since left the council. Notwithstanding this, the council does not consider that these minutes would fall within the scope of the request even if held.

Searches undertaken

18. The council has confirmed that it has undertaken a search of the records held by the Environmental Protection Team, as this is the business area with responsibility for the substantive matter. The search entailed an interrogation of the database used to manage the team's electronic records, and the limited hardcopy records held by the team that have not been so far digitised. A search was also undertaken in the team's hardcopy records that are held within the council's archive store, and advice sought from the council officer most closely involved with the third party at the time that the noise management plan emerged.
19. The council has confirmed that no relevant information was identified as part of these searches.

The Commissioner's conclusion

20. In reaching a conclusion on this matter, the Commissioner has needed to consider, on the balance of probabilities, whether the council is likely to hold the information sought by the complainant's request.
21. In reaching this decision, the Commissioner has considered the submissions of both the complainant and council in detail. The Commissioner notes the expectations that led the complainant to submit his request, and in particular his belief that the noise management plan was formed and agreed in meetings between the council and the third party. However, the context provided by the council suggests that the noise management plan was not created in this way, and instead was submitted as part of a planning application that came to be approved through the council's public planning process. The Commissioner considers that this provides a compelling explanation for why no relevant recorded information is held, or would be expected to be held.
22. On this basis, and in the absence of any conflicting evidence, the Commissioner has concluded that no recorded information is likely to be held that is relevant to the complainant's request of 12 July 2014.

Regulation 5(2) – Duty to make environmental information available on request

23. Regulation 5(2) states:

“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 request.”

24. The council did not provide its response to the complainants request until after 20 working days following the date of receipt, and therefore breached regulation 5(2).

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Andrew White
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