

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 December 2015

Public Authority: Hastings Borough Council
Address: Hastings Town Hall
Queens Square
Hastings
East Sussex
TN34 1TL

Decision (including any steps ordered)

1. The complainant has requested a copy of a Hastings Local Plan Report. Hastings Borough Council disclosed the requested information to the complainant.
2. The Commissioner's decision is that Hastings Borough Council disclosed the requested information and complied with regulation 5(1) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 25 June 2015, the complainant wrote to Hastings Borough Council (the "council") and requested information in the following terms:

"I would be very grateful you provide me under freedom information request the REPORT ON THE EXAMINATION INTO THE HASTINGS LOCAL PLAN DEVELOPMENT MANAGEMENT PLAN REVISED PROPOSED SUBMISSION VERSION 10 MARCH – 22 APRIL 2014 before it was edited by the HBC Officers please? I understand this Microsoft Word document was sent to you 29 May 2015.

This document may be headed Ref: PINS/B1415/429/4"

5. The council responded on 17 July 2015 and disclosed the requested information.

6. Following an internal review the council wrote to the complainant on 22 October 2015. It confirmed that it was satisfied that it had disclosed the information which was specified in the request.

Scope of the case

7. On 31 October 2015, following the internal review, the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The complainant disputes the authenticity of the information which was disclosed to them. The Commissioner has considered whether the council has complied with its obligations under the EIR.

Reasons for decision

Regulation 5- duty to provide environmental information

9. Under regulation 5(1) of the EIR, a public authority that holds environmental information shall make it available on request.
10. In this instance, the complainant asked for a copy of a "*REPORT ON THE EXAMINATION INTO THE HASTINGS LOCAL PLAN DEVELOPMENT MANAGEMENT PLAN REVISED PROPOSED SUBMISSION VERSION*" (the "*Report*"). The Report was created by The Planning Inspectorate (PINS) and provided to the council via email on 29 May 2015. The council confirmed that the Report was subsequently published on its website on 2 June 2015.
11. The council has explained to the Commissioner that, in addition to the original form in which the Report was provided by PINS there is an earlier "fact check" version of the Report. The council confirmed that on 14 May 2015 PINS issued it with a "fact check" version of the Report. The purpose of issuing this version of the Inspector's Report is to identify any factual errors such as incorrect place names and to seek clarification on any conclusions that are unclear. The council explained that this process does not provide any opportunity to challenge any of an Inspector's conclusions.
12. The council confirmed that, in this case, it responded to PINS in a letter sent by email on 21 May 2015 (the letter attached to the email was dated 22 May 2015) and set out a number of suggested modifications to the Report. This process resulted in the final Report sent to the council on 29 May 2015.

13. Subsequent to the publication of the final Report, on 22 June 2015, the council was contacted with a request to make a factual correction to the Report. This request came from the Inspector who authored the Report and the correction was made by the council's Planning Policy Manager. The council confirmed that an explanation of the correction was provided on its website along with a direct quote from the Inspector who requested the revision¹. The council explained that a note to this effect was also appended to paper copies it had made available.
14. The council confirmed that the complainant has been provided with all versions of the Report.
15. On occasion, the Commissioner encounters scenarios where public authorities are reluctant to disclose information because the information is inaccurate or out of date. The Commissioner's guidance clarifies that:

*"The Act covers recorded information, whether or not it is accurate. You cannot refuse a request for information simply because you know the information is out of date, incomplete or inaccurate."*²
16. The Commissioner often receives complaints which raise concerns about the accuracy of or content of information disclosed in response to a request. However, the FOIA only obliges authorities to disclose recorded information that is held at the time a request is received. Information held might contain factual inaccuracies or might contain points of view or conclusions which a requester disputes. However, such concerns are irrelevant unless there is direct evidence that what has been disclosed does not reflect what is actually held by an authority. In other words, direct evidence that information has been altered or otherwise tampered with before being disclosed.
17. The complainant is of the view that, as the Report has not been "signed" by the planning officer who is named as the author, it does not constitute an authentic Report (the Commissioner considers that 'Report' in this context can be taken to refer to both the fact check and the final version of the Report). In the complainant's opinion, the fact that an

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http://www.hastings.gov.uk/environment_planning/planning/localplan/dm_plan_siteallocations/dmplan-inspectorsfinalreport/

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

'authentic' Report is not held has an impact on any actions taken in relation to the substantive matters to which the Report refers.

18. The council has explained that, following the complainant raising these matters, it has attempted to provide reassurances that the Report provided is the only version held and that it was indeed written by the relevant inspector from PINS. In addition to providing the complainant with the chronology behind and rationale for the different versions of the Report, the council confirmed that it explained that all inspectors reports contain the relevant inspector's electronic signature as opposed to an actual handwritten signature.
19. The complainant maintains that the disclosed reports are not "authentic" because, in their view, they do contain the correct properties or signature.
20. However, as noted above, the question of the authenticity of the Report is not a relevant consideration for the purposes of the EIR. All the council is required to do is disclose environmental information it holds on request. Although, the Commissioner considers that the distinction the complainant draws between what constitutes an authentic or inauthentic report is entirely of their own making and simply reflects their belief about the form that a report should take, this is not a matter upon which he is required to reach a determination. The Commissioner's role is determine whether the council has disclosed the relevant information it holds
21. To this end, the Commissioner considers that the complainant has not provided any direct evidence that what has been disclosed does not mirror what is held by the council. We are, therefore, left with the complainant's view about what form the requested Report should take.
22. In the Commissioner's view, the council has disclosed the information which was identified in the complainant's request and has satisfied its responsibilities under the EIR. If the complainant has concerns about the council's administrative arrangements for creating or maintaining documents they are free to raise this separately, outside the scope of the EIR. In view of the above, the Commissioner has concluded that the council complied with regulation 5(1) of the EIR.

Right of appeal

23. 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

24. 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.
25. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF