

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 August 2016

Public Authority: Oxfordshire County Council
Address: County Hall
New Road
Oxford
OX1 1XD

Decision (including any steps ordered)

1. The complainant has requested all emails that contained the word "Moats". Oxfordshire County Council disclosed information. The complainant explained that as Oxfordshire County Council initially stated that it had disclosed all of the requested information but during the internal review found another draft email, he does not believe it has disclosed everything to him.
2. The Commissioner's decision is that, on the balance of probabilities, Oxfordshire County Council does not hold any further information. He therefore does not consider that there has been a breach of regulation 12(4)(a) (Information held at the time of a request) or regulation 11 (Representations and reconsideration) of the EIR. However, he does consider that Oxfordshire County Council has breached regulations 3 (Application) and 5 (Duty to make available environmental information on request) of the EIR.
3. The Commissioner does not require Oxfordshire City Council to take any steps as a result of this decision.

Request and response

4. On 30 September 2015, the complainant wrote to Oxfordshire County Council (OCC) and requested information in the following terms:

"OCC is a public body and therefore ALL emails sent and received by officers are considered public documents under the Freedom of

Information Act, I would therefore request that your IT department provide a copy of ALL internal and external emails) without time constraint or censorship, which contain the word "Moats" in either the subject header or message body, in the Inbox (including all subfolders), Sent items and Deleted items for the following officers/ex-officers:

*[name redacted]
[name redacted]*

At the same time, I would also be grateful if you could search for emails within the mailbox of the above officers that have been 'permanently deleted' within the last 6 months."

5. OCC responded on 28 October 2015. It disclosed copies of emails and confirmed that no relevant emails were permanently deleted. It went on to explain that such emails were automatically archived and confirmed that it had searched for the time period specified in the complainant's request.
6. Following an internal review OCC wrote to the complainant on 18 November 2015. It provided the complainant with a further draft email and explained that it did not hold any further information.

Scope of the case

7. The complainant contacted the Commissioner 26 November 2015 to complain about the way his request for information had been handled. He explained that as OCC had initially stated that it had disclosed everything it held but following an internal review, it disclosed a further draft email, he did not believe that it had disclosed everything to him.
8. During the Commissioner's investigation the complainant pointed to a chain of emails which appeared to miss off the initial email of that chain. He also sent the Commissioner copies of emails between staff at South Oxfordshire District Council (SODC) which were about the planning application. He pointed out that one of the named officers at OCC had been copied into them.
9. The Commissioner will consider whether OCC is correct to state that it does not hold any further information in relation to this request.

Reasons for decision

10. The Commissioner notes that the request asks for all emails containing the word "Moats" in it and that this is linked to a planning application to build bungalows.

Is the information environmental?

11. Regulation 2(c) of the EIR states that 'environmental information' constitutes any information on measures such as policies, plans and activities which are likely to affect environmental elements and factors. These are listed in regulations 2(1) (a) and (b).
12. The Commissioner considers that, given that the request relates to a planning application, it falls under the EIR.

Regulation 12(4)(a) – Exceptions to the duty to disclose environmental information

13. Regulation 12(4)(a) provides:

"For the purposes of, paragraph (1)(a), a public authority may refuse to disclose information to the extent that-

(a) it does not hold that information when an applicant's request is received;"

14. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments.
15. He will also consider the actions taken by the public authority to check whether it holds any further information and any reasons offered by it to explain why the information is not held.
16. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
17. OCC explained that it had carried out searches using the word "Moats" and that the searches included all information held by the two members of staff named in the request, in their personal email accounts.
18. The Commissioner enquired whether the information had ever been held, and about the scope, quality, thoroughness and results of the searches carried out by OCC.

19. OCC explained that all its email accounts are located on its secure personal computers or laptops and that information is not held locally on individual personal computers or laptops. Furthermore, OCC confirmed that its records are held electronically.
20. The Commissioner also enquired whether the information had ever been held but deleted and whether copies of information may have been made and held in other locations.
21. OCC confirmed that no recorded data has been deleted or destroyed and that there would not have been any copies made and held in other locations.
22. In addition, the Commissioner asked whether there was any legal requirement or business need for OCC to hold the information. OCC explained that both of the named officers keep the correspondence for continuity.
23. The Commissioner also asked whether there was information held that was similar to that requested. OCC confirmed that nothing similar was held.
24. The Commissioner asked OCC about the complainant's complaint about a missing email. OCC confirmed that it had disclosed this to him already but had resent it to him.
25. The Commissioner also asked OCC about the complainant's complaint about the non-disclosure by OCC of emails from South Oxfordshire District Council (SODC) to one of the named officers at OCC in relation to the planning application. OCC explained that as the complainant had made a separate FOI request to SODC and given that its officer had only been copied into these emails alongside SODC personnel, it had assumed that the complainant would have received these emails direct from SODC as part of its response. However, OCC confirmed that officers had rechecked their mail boxes and that it had sent the emails to the complainant.
26. Taking everything into account, the Commissioner does not consider that there is any evidence that show that OCC holds any additional recorded information in relation to this request.
27. Regulation 12(4)(a) of the EIR is technically subject to a public interest test. However, the Commissioner considers that it is not necessary to carry this out in cases where he considers that, on the balance of probabilities a public authority does not hold any further information. Therefore, the Commissioner has not gone on to consider the public interest test in this case.

28. However, the Commissioner notes that OCC explained that in relation to the emails from SODC, OCC explained that its officer had only been copied in to them. Regulation 3(2) deals with whether a public authority holds environmental information or not for the purposes of the EIR.

Regulation 3 - Application

29. Regulation 3(2)(a) provides that, for the purposes of the EIR, environmental information is held by a public authority if it has been produced or received by that public authority.
30. The Commissioner considers that in this case, OCC did hold the emails referred to in paragraph 25, as one of its officers had been copied into them. He therefore considers that OCC has breached regulation 3. The Commissioner also notes that these emails were provided outside of the twenty working days set out in regulation 5.

Regulation 5 –Duty to make available environmental information on request

31. Section 5 provides that, on receipt of a request for information, a public authority must respond promptly and no later than twenty working days after the date it receives the request.
32. Given that OCC did not disclose the emails referred to in paragraph 25 within the twenty working day limit set out above the Commissioner considers that OCC has breached regulation 5.

Regulation 11 - Representations and reconsideration

33. The Commissioner notes the complainant has stated that he does not believe that OCC had given him all of the information it held, as it had stated initially that it had and then produced another email when carrying out the internal review.
34. Regulation 11 provides that, on receipt of a public authority's response to a request, an applicant can make representations to the public authority if appears to them that it has failed to comply with its obligations under the EIR. The public authority has forty working days to reconsider how it dealt with the request and notify the applicant of its decision. This provides the public authority with an opportunity to remedy any failings in how it dealt with the request originally. This is commonly referred to as an internal review.
35. The applicant requested an internal review on 29 October 2015 and OCC responded on 18 November 2015. It confirmed that it carried out an internal review and as part of that review, it asked the two named officers in the request, to repeat their searches. One of the officers had

a draft email which had never been sent but related to the request. OCC explained that the officer had not realised that draft emails fell under the same rules as correspondence that had been sent. OCC explained that it had attached the draft email and apologised that it had not been included in its original response of 28 October 2015.

36. The Commissioner considers that OCC responded to the complainant's request for an internal review within forty working days. He also considers that it explained to the applicant that there had been an omission and remedied this by providing the relevant draft email. The Commissioner therefore does not consider that OCC has breached regulation 11.

Right of appeal

37. 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

38. 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.
39. 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

Jon Manners
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