

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

**Decision notice**

**Date:** 25 July 2016

**Public Authority:** Oxford City Council  
**Address:** St Aldate's Chambers  
St Aldate's  
Oxford  
OX1 1DS

**Decision (including any steps ordered)**

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1. The complainant has requested information from Oxford City Council ("the Council") about the Unlawfully Moored Boats Enforcement Group ("UMBEG"). The Council stated that it did not hold the requested information.
2. The Commissioner's decision is that the Council did hold the requested information and that it breached regulation 5(1) of the EIR by failing to make it available on request. He also found that by failing to respond within the statutory timeframe it breached regulation 5(2) and that by failing to provide an internal review it breached regulations 11(3) and 11(4).
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Locate all relevant information held in relation to each limb of the complainant's request and to issue a fresh response that complies with regulation 5(1), or issue a valid refusal notice under regulation 14(1).
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 26 November 2015, the complainant wrote to the Council via the What Do They Know ("WDTK") website<sup>1</sup> and requested information in the following terms:

*"Please treat this request for information as a request under the Freedom of Information Act 2000. Please provide the following information:*

*1. Minutes of the meetings of UMBEG (Unlawfully Moored Boats Enforcement Group) that have taken place since 22 May 2014.*

*2. All other information regarding UMBEG created on or after 1st January 2014."*

6. The Council responded on 7 January 2016. It stated

*"I'm afraid we have no minutes regarding meetings of UMBEG that have taken place since 22 May 2014. We also hold no other information on UMBEG since that date.*

*I'm sorry I couldn't have been of more assistance."*

7. The complainant requested an internal review on 10 February 2016. She stated:

*"The Unlawfully Moored Boats Enforcement Group (UMBEG) was initiated by Oxford City Council in 2010. Meetings of UMBEG have taken place approximately every two months since early 2011. Meetings of UMBEG took place or were scheduled to take place in Oxford City Council premises on 23rd October 2014; 13th January 2015; 7th July 2015 and 15th September 2015.*

*Oxford City Council officer [name redacted], Anti Social Behaviour Investigation Case Manager, is the current convenor of UMBEG. Oxford City Council officer [name redacted], Head of Service, Environmental Development, is the officer with ultimate responsibility for UMBEG.*

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<sup>1</sup> <https://www.whatdotheyknow.com/>

*Oxford City Councillors [names redacted] were instrumental in establishing UMBEG.*

*Therefore to say that Oxford City Council holds "no minutes regarding meetings of UMBEG that have taken place since 22 May 2014" and "no other information on UMBEG since that date" is at best erroneous and at worst untruthful, obstructive and derisory. Please therefore provide the information that I have requested."*

8. The Council did not respond to the complainant's request for an internal review.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 5 May 2016 to complain about the way her request for information had been handled. She also added a note to the public WDTK record of the request that she had complained to the Commissioner.

10. On 27 May 2016, a third party added two annotations to the public WDTK record, as follows:

*"See: <https://www.oxford.gov.uk/downloads/down...>. They had them all along. OCC appear to have engaged in a cover-up."*

*"For the avoidance of doubt:*

*UMBEG Minutes (CLOSED) 7 July 2015 - redacted*

*UMBEG Minutes (CLOSED) 12 May 2015 - redacted*

*UMBEG Minutes (CLOSED) 17 March 2015*

*UMBEG - Hotspot Action Plan - redacted PDF"*

11. The annotations linked to documents available on the Council's website, which fell within the scope of the request.
12. In light of the above, the Commissioner has considered the Council's response that it did not hold the requested information. He has also considered the time the Council took to respond to the request and its failure to conduct an internal review.

### **Reasons for decision**

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*Is the information environmental?*

13. 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 state of the elements referred to in 2(1)(a), will be environmental information. The requested information relates to decision making with regard to usage of local canals and waterways. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

*Regulation 5 – duty to make information available on request*

14. The complainant's grounds for complaint were that she did not accept that the Council did not hold the information described in the request.
15. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. It requires a public authority to establish accurately what information it holds that falls within the scope of the request. If the finding here is that the Council failed to identify correctly what relevant information it held, this would mean that it was in breach of regulation 5(1) of the EIR.
16. When considering whether a public authority has identified all relevant information that it holds, the Commissioner applies the civil standard of the balance of probabilities. The issue here is, therefore, whether on the balance of probabilities the Council identified all the information it held that fell within the scope of the complainant's request.
17. The Council had informed the complainant that it did not hold information that fell within the scope of the request. However, the complainant's observations about the status of UMBEG, coupled with the third party annotations on WDTK (with links to some of the requested information on the Council's own website) call this assertion into question.
18. The Commissioner asked the Council to revisit the request and to clarify to him precisely what information it held at the time the request was received, which fell within its scope. The Commissioner asked it to explain why, if it held relevant information, the complainant was informed that it did not.
19. Assuming information was held, the Commissioner also asked the Council to make arrangements to notify the complainant accordingly and either to disclose it or provide the complainant with a refusal notice, citing a relevant non-disclosure exception.
20. Finally, the Commissioner asked the Council to explain why it exceeded the 20 working day time limit for responding in the first instance, and why it had not actioned the complainant's request for an internal review.

21. In response, the Council said only the following:

*"A thorough trawl was undertaken at that time for minutes or other information but officers concluded that there were no records of the meetings. At the time of the FOI request the key personnel, who had been involved in the group, were no longer in post and no records could be found.*

*In May of this year some papers were unearthed and published on the Council's website. The documents are redacted versions of the minutes of meetings of UMBEG held on 17th March 2015, 12th May 2015 and 7th July 2015 as well as a redacted copy of an UMBEG document entitled "Hotspot Action Plan". Unfortunately the officers in the Council's Community Services department did not inform the Freedom of Information officer that the information had been found and published on the website and so [the complainant] was not sent a copy at that point.*

*At the beginning of this year the Oxford City Council received an unprecedented number of FOI requests and the high volume had a knock on effect on the internal review process. It is for this reason that the internal review was not conducted sooner."*

22. The Council did not clarify to the Commissioner exactly what information it held which fell within the scope of the request, at the time it was received. The Commissioner therefore cannot be certain that the Council has now identified all the relevant information. However, from the above, the Commissioner is satisfied that the Council held the information for which there is a link provided in the third party WDTK annotations, at the time the request was received, and that the Council has not confirmed that to the complainant. These points are not disputed by the Council.

23. By failing to accurately identify whether it held information falling within the scope of the request, the Council breached regulation 5(1) of the EIR. Since the Council has not taken steps to rectify its erroneous response informally, the Commissioner now requires the Council to take the steps set out in paragraph 3, above, to ensure compliance with the regulations.

*Time for compliance*

24. Regulation 5(2) of the EIR states that on receipt of a request, a public authority must comply with regulation 5(1) as soon as possible and not later than the twentieth working day following the date of receipt of the request.

25. The complainant submitted the request on 26 November 2015. The twentieth working day after the date of receipt was 24 December 2015. As the Council did not issue a response by that date it breached regulation 5(2) of the EIR.

*Regulation 11 – internal review*

26. Regulation 11(1) provides that an applicant may make representations to a public authority, if they consider that the public authority has failed to comply with the requirements of the EIR in relation to their request.
27. Regulation 11(3) requires the public authority to consider these representations, along with any supporting evidence provided by the applicant, and to decide whether it has complied with the requirements of the EIR. Finally, regulation 11(4) requires that the public authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.
28. The complainant requested an internal review of the handling of the request on 10 February 2016, and provided information which might have altered the outcome of the request, had it been actioned by the Council. However, the complainant heard nothing further from the Council.
29. As the Council has failed to conduct an internal review, the Commissioner must find that it has failed to comply with regulation 11(3). It follows that, in failing to provide the complainant with notice of its decision in response to her representations within the appropriate time period, the Council also failed to comply with regulation 11(4).

**Other matters**

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30. The Commissioner notes that the Council did not take the action he asked of it during the investigation, which might have enabled the matter to be informally resolved without recourse to a decision notice (see paragraph 19, above).
31. He also considers that the Council's explanation for failing to locate any of the requested information raises concerns about its wider records management practices. It has offered little in the way of meaningful analysis as to how the requested information came to be overlooked (or "unearthed"), or how such problems may be avoided in future.

32. As well as issuing this notice, the Commissioner has made a separate record of these matters. These issues may be revisited with the Council should evidence from other cases suggest that this is necessary.

## Right of Appeal

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33. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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** .....

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**