

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

**Decision notice**

**Date:** 30 June 2016

**Public Authority:** Winchester City Council  
**Address:** Colebrook Street  
Winchester  
SO23 9LJ

**Decision (including any steps ordered)**

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1. The complainant has requested copies of emails between a member of Winchester City Council (the council) and two architects.
2. The Commissioner's decision is that, on the balance of probabilities, the council does not hold any further information. The Commissioner's also finds that in failing to respond to the request for internal review the council has breached regulation 11(4) of the EIR.
3. The Commissioner does not require the council to take any steps as a result of this decision notice.

**Request and response**

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4. On 29 September 2015 the complainant made a request for information in the following terms:  
*"copies of all emails between Cllr Tait and the following: Drew Smith; [redacted]; Quayside Architect; [redacted]"*.
5. On 21 October 2015 the council responded. It explained it had dealt with the request under the EIR rather than the FOIA. It provided some information within the scope of the request but refused to provide the remainder. It stated that it had redacted a small amount of information.
6. In addition the council stated that it had not issued a formal refusal notice with regard to the redacted information.

7. On 1 November 2015 the complainant requested an internal review. He was specifically concerned that the IT department had not carried out a search for the information that fell within the scope of the request.
8. The council did not respond. The Commissioner wrote to the council on 21 December 2015 advising it should provide an internal review response within 20 working days, and in any event not more than 40 working days. The council did not respond.

### **Scope of the case**

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9. The complainant initially contacted the Commissioner on 14 December 2015 to complain about the way his requests for information had been handled.
10. The complainant has not raised concerns about the redacted information only that he considers the council holds more information than it has disclosed. Furthermore the complainant has not contested the council dealing with his request under the EIR. The Commissioner has therefore considered whether the council holds any further recorded information relevant to the request.

### **Reasons for decision**

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#### **Regulation 5 of the EIR - Duty to make available environmental information on request**

#### **Regulation 12(4)(a) – information not held**

11. Under regulation 5(1) of the EIR public authorities have a general duty to make environmental information available when it is requested. When the information is not held, public authorities should issue a refusal notice, in accordance with regulation 14 that cites the exception under regulation 12(4)(a) of the EIR. This exception applies when information is not held.
12. In scenarios where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
13. The Commissioner will also consider the actions taken by the authority to check that the information is not held and any other reasons offered

by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

14. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations.
15. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold further information.
16. The council stated that this request was in respect of specific correspondence between a councillor, who was for a period the Portfolio Holder for Housing, and therefore had specific responsibility for affordable housing matters, including potential development sites such as Hookpit Farm. Following the election in May 2015, Cllr Tait was not re-appointed to the Cabinet and therefore his responsibility for this area ceased.
17. The council explained that its 'Mailmeter' system allows a detailed search of emails held by the council against various search parameters, including dates, email addresses, subject and text. The council confirmed that searches were carried out by the councillor using the email addresses identified. It stated that this search would identify all emails which met the search criteria.
18. The council further advised that the councillor uses his council Outlook email, and a council computer within the Members' Room, to undertake his council work. The search therefore was directed at information held by the council on the main network. It confirmed that the search terms used were the three email addresses identified together with the term "Hookpit".
19. The council explained that the information would have been held electronically and confirmed that no information relevant to the scope of the request had been deleted or destroyed. It also explained that 'Mailmeter' retains records indefinitely.
20. The council confirmed that the emails would be held for the purpose of the provision of affordable housing and that there are no statutory requirements upon the council to retain the requested information.

21. Finally, the council confirmed that there is no information held that is similar to that requested.
22. The Commissioner also considered whether the council had any reason or motive to conceal the requested information but has not seen any evidence of this.
23. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further information relevant to this request.
24. The Commissioner is therefore satisfied that on the balance of probabilities, further information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of regulation 5 in relation to such information.

### **Other matters**

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25. The Commissioner notes that the council did not issue a formal refusal notice with regard to the exceptions it considered applied to the information it withheld (that is the redactions made to the information provided).
26. The council should ensure that in all cases a formal response is issued in compliance with regulation 14(3) of the EIR.

## Right of appeal

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27. 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)

28. 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.
29. 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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**