

Environmental Information Regulation 2004 (EIR)

Decision notice

Date: 21 September 2018

Public Authority: Ashurst Parish Council
Address: 22 Elder Close
Portslade
Brighton
BN41 2ER

Decision (including any steps ordered)

1. The complainant requested from Ashurst Parish Council (the Council) information relating to the development of a draft Neighbourhood District Plan (NDP) produced by a group of four parish councils. 'SWAB' is an acronym for Steyning, Wiston, Ashurst and Bramber parish councils which worked together to produce the plan.
2. The Commissioner's decision is that on a balance of probabilities the Council was correct to state that no further information is held. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Background

3. Steyning, Wiston, Ashurst and Bramber Councils together set up the SWAB NDP in 2014. The SWAB Steering Committee included councillors from each council and a firm of consultants were used to assist with the SWAB.
4. The main aim of the SWAB NDP was to identify sites for development. The SWAB NDP would be a supplemental planning policy document which Horsham District Council (HDC) and The South Downs National Park Authority (SDNPA) would have to take substantial account of when considering any planning application.

Request and response

5. On 14 August 2017 the complainant wrote to the Council and requested information in the following terms:

"1. Please let me have the most up to date version of the SWAB draft pre-submission document which sets out what development proposals the public was to be consulted on if the process had not been halted.

2. Going back as far as the first version of the "Wiston Estate Steyning Concept Note", which is believed to be February 2013- please let me have any file notes, memoranda, briefing papers, emails, other correspondence, and any other documentation exchanged between The Wiston Estate, the Goring Family or any consultants retained by them on the one hand and with SWAB and/or any of its constituent councils and/or any councillor and/or SWAB's consultants on the other hand which record any intentions or desires or plans concerning possible development at Bayards Fields including, but not limited to, the Wiston Whole Estate Plan whether in terms of content or in terms of intended publication.

3. Over the same period - please let me have any file notes, briefing papers, minutes, memoranda or other documents relating to any meetings or discussions in connection with parish council meetings, SWAB meetings and workings, or working parties, which may have taken place within or between parish councils, councillors or clerks concerning the Wiston WEP or concerning possible development at Bayards Fields or concerning the appointment of the SWAB consultants.

NB I do not require any document, such as minutes or agendas, which currently appears on any parish council or the SWAB website and so are already in the public domain."

6. On 12 September 2017 the Council responded. It referred the complainant to the 'recent' reply in which Steyning Parish Council had refused an identical request for information and cited sections 14 and 22 of the FOIA. The Council also confirmed that it did not hold any information relating to his FOI request.
7. On 18 September 2017 the complainant asked for an internal review.

8. On 18 November 2017 the Council responded to the complainant's internal review request and maintained its position that it did not hold any further information relating to the request. The Council again referred the complainant to Steyning Parish Council's refusal notice of 6 October 2017. It also referred him to the SWAB website, the 'Site Selection Process' and the 'Potential Sites' sections for further information on the site selection process in general and on the Bayards Field Site. The Council confirmed that it did not hold any additional information relating to Bayards Field.

Scope of the case

9. The complainant contacted the Commissioner on 20 November 2017 to complain about the way his request for information had been handled.
10. During the course of this investigation, the complainant confirmed that he no longer requires information to item 1 of his request. However, the complainant is still seeking information relating to the remaining items 2 and 3 of his request.
11. The scope of the case concerned whether further information falling within the scope of items 2 and 3 of the request is held by the Council.

Reasons for decision

Regulation 2(1) - Is the requested information environmental?

12. Regulation 2(1) of the Environmental Information Regulations 2004 (EIR) defines environmental information as being information on:
 - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*

- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
 - (d) reports on the implementation of environmental legislation;*
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
13. The Commissioner has viewed SWAB related information in the course of investigating other associated cases and can make a broad assumption that any remaining information (if it existed) would be information relating to the development of a large area of land. She believes that all the requested information would (if it existed) fall under one or more of the categories outlined above and that the correct legislative regime is therefore the EIR.

Regulation 12(4)(a) – Information not held

14. Subject to certain conditions, Regulation 5(1) of the EIR requires a public authority, who holds environmental information, to make it available on request.
15. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide requested information if it does not hold it at the time of the request being received.
16. Where there is some dispute between the amount of information identified 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 First-tier Information Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

17. The Council stated that it does not hold any further information beyond that which it has already disclosed as part of SWAB, or which is available from the SWAB website. The complainant considers further information is held by the Council and that this should be disclosed.
18. The Commissioner has made detailed enquiries to the Council in order to assess whether further information is held relevant to the scope of the complainant's request.
19. The Council explained that searches were carried out by the representative on the SWAB project of their electronic and manual files associated with the project.
20. It said that consultations between the chairman of the Council, the previous clerk to the Council and the chairman of the SWAB project had been carried out. Searches had been completed on individuals' email accounts, SWAB folders and information on personal computers, networked resources and emails. In addition, the Council reported that it had contacted the former chairman of the Council and he had confirmed that he had never had sight of or is aware of any documentation relating to items 2 and 3 of this request.
21. The Council explained that it had access to a file sharing system with the other councils involved in the SWAB project but said that the individuals involved had not had cause to use it. The Council responded to the Commissioner's questions on what information was held on its own system. It confirmed that it does not hold any other relevant information within scope of the request.
22. The Council stated that relevant information could have been held prior to the request but that it had no record of any such information having previously (i.e. prior to the request being received) been deleted or destroyed.
23. The Council also confirmed that it is not aware of any statutory requirements for it to retain the requested information.

The Commissioner's position

24. The Commissioner has considered the Council's response to her questions and its explanations in regards to further information held. She is aware from her investigations in other associated cases that the Council had access to two file sharing systems, a Dropbox facility referred to by Steyning Parish Council and a Yammer file sharing system set up by HDC.

25. The Commissioner has been provided with evidence that the Council did not use the Yammer file sharing system. HDC confirmed that it set up a Yammer system in July 2017 which parish councils could use to discuss and share information relating to the creation of neighbourhood plans. The Council confirmed however that neither SWAB nor HDC had uploaded any information onto the relevant part of the Yammer system and provided screenshots of the system to demonstrate this. It confirmed that this forum was never actively used by SWAB.
26. The Council confirmed that a Dropbox facility had been set up for the purposes of sharing SWAB related information but in practice this facility was rarely used by councillors and little information was stored there. The Council have previously provided the complainant with copies of what SWAB related information had been retained in the Dropbox in respect of a separate but related information request.
27. The Commissioner accepts that the Council's searches would have located the requested information if it was held and she is satisfied that the Council conducted relevant and appropriate searches of its records.
28. In arriving at a conclusion in this case, the Commissioner has considered what information she would expect the Council to hold and whether there is any evidence that the information was ever held. In doing so the Commissioner has taken into account the Council's responses to the questions posed by her during the course of the investigation.
29. The majority of the information relating to SWAB is available from the SWAB website. SWAB dealt with most of the work leading to the creation of the NDP, with the Council providing administrative aid where required to do so. Although the Council was part of SWAB, it confirmed that the information it holds had already been provided or is already publicly available from the SWAB website.
30. The complainant has provided his reasons why he considers that the Council should hold further information. He is of the view that the councillors and the representatives on the SWAB steering committee, must have received the "*consultation documents*" referred to within one of the links on the council's website.
31. The complainant believes that as the SWAB project was a joint venture, the Council must have further information (written communication between the consultants and the Council) in relation to certain issues. This included; the appointment of the SWAB consultants, what they were required to do and their fees. However, the question for the Commissioner is not what information 'should' be held, but what information was held at the time the request was received.

32. The Commissioner acknowledges that the complainant's arguments suggest that further relevant information could be held by the Council. As part of the investigation of the complaint, the Commissioner has put each of these arguments to the Council. It revisited the request in light of these but the Council maintained that its original position was correct in that no relevant information was held.
33. In submissions to the Commissioner, the Council advised that as the Council is designated as a rural exception area, it did not become closely involved in the housing issues and site selections of the other parish councils. It said that the Council's principal concern regarding housing, was to find a suitable site within its parish for up to four affordable houses.
34. The Council confirmed that by the time it joined the SWAB, the consultants had already been appointed. The Council reported that at an early Steering Group meeting, the members were informed that the consultants had also been assisting the Wiston Estate with a 'plan' where, amongst other things, it was considering the question of affordable houses.
35. The Council informed the Commissioner that it could not recall (and could not find after carrying out checks and searches) receiving any communication about this 'plan'. The Council explained that it *"saw no problem with this situation since we had always considered that this Plan was being developed outside the SWAB set-up and the fact that the Plan concerned land inside the SDNPA (South Downs National Park Authority) meant that there was adequate build-in protection against any unsuitable development."*
36. The Council said that it took the view that this Plan, which was being put together by an individual landowner, was nothing to do with SWAB in general but also with the Council in particular. It added that as the Council had little involvement with the Wiston Estate Plan or the Bayards Field Site, this accounts for why the Council does not hold information in respect of the same.
37. The Commissioner has considered the request along with the Council's explanations and responses to her questions, and she has decided that on the balance of probabilities the Council did not hold the requested information at the time of the request. As a result, the Commissioner does not consider any further action is required.

Right of appeal

38. 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

39. 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.
40. 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