

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 24 May 2019

**Public Authority:** Walford Parish Council  
**Address:** Wythall  
Bulls Hill  
Walford  
Ross on Wye  
HR9 5SD

#### **Decision (including any steps ordered)**

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1. The complainant has requested some information from Walford Parish Council ("the Council") regarding permission granted for the works carried out on a Site of Special Scientific Interest ("SSSI") and the appointment of a Councillor to a non-executive director of the company managing the site. The Council responded providing some information that was dated after the request was made. The Council also states it has provided all of the information it holds and it does not hold any further information surrounding the scope of the complainant's request.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold the information that was requested. However, by responding to the request outside of the 20 working day timeframe, the Council has breached regulation 5(2) of the EIR.
3. The Commissioner requires no further steps from the public authority.

## Request and response

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4. On 14 May 2018, the complainant wrote to the Council and requested information in the following terms:

### Request 03

*"I herewith submit for your attention, an Open Government Request for information to which I am entitled to have access under the Freedom of Information Act 2000.*

*The information to which I request access is with respect to operations conducted within the Site of Special Scientific Interest [SSSI] on land owned by Walford Parish Council adjacent to the canoe launch site at Kerne Bridge.*

*I refer to The Wildlife and Countryside Act 1981 S28.*

*Please supply copies of the notification supplied by WPC and copies of related permissions granted by Natural England, both prior to commencement of the works.*

*I understand that under the terms of the Freedom of Information Act 2000 I may expect a response to this request within 20 working days.*

*Should any part of the information requested be more complex to recover than other parts, I request that the information be provided on an as available basis.*

*Should my request be denied either in whole or in part you should justify your reasons why any information is retained by reference to the relevant Part, Schedule and section of the Freedom of Information Act 2000.*

*Should any part of the information be denied then all those other parts which are not denied should be released as soon as available to you and without delay.*

*In the event of information being denied I reserve the right to appeal."*

### Request 04

*"I herewith submit for your attention, an Open Government Request for information to which I am entitled to have access under the Freedom of Information Act 2000.*

*The information to which I request access is with respect to a statement made by [name redacted] of Walford Parish Council, during a full council meeting on 4th April 2018.*

*During the meeting the following questions was asked:-*

*"The contract specifies that Walford Parish Council may nominate a Non-Executive Director of Riverseas Holdings Ltd. When will the Parish Council nominate this Director?"*

*To which the chairman replied :-*

*"The Parish Council already has"*

*Please supply a copy of the written record which identifies when Walford PC voted and resolved to nominate a non executive director of Riversea Holdings Ltd, and the name of the councillor so nominated.*

*I understand that under the terms of the Freedom of Information Act 2000 I may expect a response to this request within 20 working days.*

*Should any part of the information requested be more complex to recover than other parts, I request that the information be provided on an as available basis.*

*Should my request be denied either in whole or in part you should justify your reasons why any information is retained by reference to the relevant Part, Schedule and section of the Freedom of Information Act 2000.*

*Should any part of the information be denied then all those other parts which are not denied should be released as soon as available to you and without delay.*

*In the event of information being denied I reserve the right to appeal."*

5. The Council responded on 17 September 2018. It provided some information but this had been created after the complainant had made the request.
6. Following an internal review for request 03 on 21 September 2018 and request 04 on 21 September and 5 October 2018, the Council wrote to the complainant to advise that it did not hold any recorded information within the scope of his requests that was dated before the date he made them on 14 May 2018.

## Scope of the case

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7. The complainant contacted the Commissioner on 24 July 2018 to complain about the way his requests for information had been handled.
8. After gaining internal review responses for both requests 03 and 04, the complainant contacted the Commissioner again as he remained dissatisfied with the Council's stance on the matter.
9. The Commissioner sought some clarification with the requestor to find out what his grounds for complaint were, as she can only make a decision on how the Council has handled the request under the FOIA and EIR.
10. The complainant confirmed he believed that despite the Council stating that it held no further information relating to his request that was created before 14 May 2018, it should hold more than what it had provided to him as there should be evidence of the decision making process it has taken to appoint a director and to gain permission from Natural England. He also says that the Council is incorrect when it advises that Riversea Holdings Ltd. ("RHL") requested the permission of Natural England for works on the site.
11. It is worth noting at this stage that the Commissioner can only provide her view on the complaint relating to access to information, and not the accuracy of any information published or provided in response to a request for information. A public authority will have complied with their obligations under the EIR where they have provided the recorded information that they hold in relation to a request irrespective of whether this information is accurate or not. Therefore the Commissioner cannot assess the accuracy of information disclosed in response to a request nor can she look into accusations of maladministration.
12. The Commissioner considers that the scope of this case is to determine whether the Council was correct in stating that it does not hold any information within the scope of the complainant's requests (numbered 03 & 04) that was dated before the requests were made.

## Reasons for decision

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### **Regulation 5(1) – Duty to make information available on request**

13. Regulation 5(1) of the EIR states that: "*a public authority that holds environmental information shall make it available on request.*" This is subject to any exceptions that may apply.

14. 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 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).
15. The Commissioner shall assess requests 03 and 04 separately within this decision notice.

### Request 03

16. To revisit this request made on 14 May 2018, the complainant asked for the following:

*"The information to which I request access is with respect to operations conducted within the Site of Special Scientific Interest [SSSI] on land owned by Walford Parish Council adjacent to the canoe launch site at Kerne Bridge.*

*I refer to The Wildlife and Countryside Act 1981 S28.*

*Please supply copies of the notification supplied by WPC and copies of related permissions granted by Natural England, both prior to commencement of the works."*

17. When the Council responded to the request to say that earlier consents were applied for and granted to RHL, the complainant raised concerns as he was under the impression that either permission was granted to another party such as the Council or was not granted.
18. The complainant argues that he has been in contact with the third party, Natural England, to check if any permission had been granted to RHL to start work on the SSSI. Natural England responded to the complainant to say it did not have a record of granting approval to RHL for the works conducted installing the wooden kiosk at Kerne Bridge.
19. The Council argues that it had not sought permission for this activity as it is RHL who was managing the site and project therefore any permissions granted by Natural England would not have been held by the Council.
20. To make a decision on this, the Commissioner asked the Council if it had been granted permission by Natural England regarding the subject of the request and it had responded to say none was ever sought by the Council.

21. The Commissioner understands, however, that within one of its responses to the complainant, there was a copy of the permission granted by Natural England to [name redacted] of Walford Parish Council but it was care of RHL. In order to determine whether the information that was sent to RHL was held by or on behalf of the Council, the Commissioner has asked the Council to explain why it held one document relating to the works carried out on the SSSI if it was not the body to have sought the permission. It responded to say that the applicant was from RHL and as the Council owns the land the works were carried out on, the applicant entered the Council's name as owner of the land, but used RHL's address and contact for management. As the Council was named on the application form, it appeared to have obtained a copy of this permission but no others as it maintained that the permissions had been sought by RHL.
22. The Commissioner asked that if permission had been granted to an organisation other than the Council (e.g. RHL), could it describe the relationship between the Council and the third party that had been granted the permission and physically holds information relating to the complainant's request. In response to this, the Council explained that RHL had sought all permission relating to the site. The Council further explained that the relationship it has with RHL is that it is a "Development Partner" where RHL had made a bid for the contract to manage the site. It pays a fee to the Council to use the land and the Council collects a proportion of the parking revenue from RHL.
23. As the Council has described why it was not the body to have sought permission, and the company that did is not a public authority, the Commissioner is satisfied with the Council's explanation and the searches it performed. Therefore, the Commissioner finds that the Council does not hold the specific information requested by the complainant in "Request 03".

#### Request 04

24. To revisit the request, the complainant asked for the following:

*"Please supply a copy of the written record which identifies when Walford PC voted and resolved to nominate a non executive director of Riversea Holdings Ltd, and the name of the councillor so nominated."*
25. The complainant makes the following point in his request for an internal review:

*"A question was asked and regardless of any statements made by the chairman an answer was given by him and heard by the assembled members of the public."*

*The answer was that the Parish Council had already nominated a director of Riversea Holdings Ltd.*

*For this statement to be true there must be a record of the Parish Council sitting in full session and taking a resolution which would then be formally recorded*

*My FoI clearly asks to see a copy of that resolution."*

26. From this, the complainant appears to have reason to believe that the Council is withholding information from him as it cannot be true that there is no written proof to show that it was agreed for the specific councillor to take on the non-executive director role at RHL.
27. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in paragraph 14, above, the Commissioner is required to make a finding on the balance of probabilities.
28. The Commissioner asked the Council whether it had a meeting that had been recorded relating to the appointment of one of its councillors to be a non executive director of RHL.
29. The Council responded to advise that in order to progress the canoe launch project, the Council formed a working group that met on numerous occasions and none of the meetings were minuted.
30. The Council also stated that the contract for managing the site was brought to a conclusion early in 2018 and within the contract was an offer to Riversea Holdings Ltd to appoint a non-executive director, nominated by the council in order to monitor affairs on behalf of the Council. In the period leading up to the nomination, this was discussed in the working group and agreed by RHL.
31. Although the contract was signed in February 2018, in the Council meeting on 4 April 2018, in which minutes were recorded, a statement was read out by the Council chairman, explaining that the Kerne Bridge Canoe Launch site will not be included on the agenda or discussed until formal complaints relating to the site had been dealt with by Herefordshire Council.
32. After the complaints had been dealt with by Herefordshire Council, the next minuted meeting was on 29 August 2018.
33. The appointment of the councillor to the non-executive director role of RHL was ratified by the Council on 29 August 2018 and the minutes of

this meeting were provided to the complainant despite them not being held at the time of the request.

34. The Commissioner had also enquired if the Council held any other information within the scope of the request, to show if the Council voted for the appointment of the specific councillor to the non-executive director role of RHL. It reiterated that no information of this nature was ever held. It explained that in order to move the project along, anything discussed was in the working group where the meetings were not recorded, but the appointment of the councillor to the role would have been discussed in one of those meetings.
35. Having considered the arguments of the complainant and the Council, the Commissioner is also satisfied with the Council's explanation and the searches it performed. Therefore, the Commissioner finds that the Council does not hold the specific information requested by the complainant in "Request 04".

#### **Regulation 5(2) – Time for compliance**

36. Regulation 5(2) states that such information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
37. The Commissioner understands that the initial request was made on 14 May 2019 and the initial response to the complainant was only given on 17 September 2018. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request of 14 May 2018, the Council has breached regulation 5(2).



## Right of appeal

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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@justice.gov.uk](mailto:grc@justice.gov.uk)

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