

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

### **Decision notice**

**Date:** 1 September 2022

**Public Authority:** St Helens Borough Council  
**Address:** Wesley House  
Corporation Street  
St Helens  
WA10 1HF

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

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1. The complainant has requested information held by St Helens Borough Council ("the Council") relating to the funding and plans for the proposed Haydock Heritage Trail.
2. The Commissioner's decision is that the requested information is environmental information and so is a request under the EIR and that the Council has provided all the information it holds falling within the scope of the request. However, the Council breached regulation 5(2) and regulation 11(4) of the EIR in that it failed to provide a response within 20 working days and failed to complete their internal review within 40 working days.
3. The Commissioner does not require the Council to take any steps.

## Request and response

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4. On 3 May 2021, the complainant made the following information request to the Council:

"Please provide all documentation, including emails, reports, meeting notes, internal financial transfers or related documentation in connection with the proposed £300,000 Haydock Heritage Trail.

The documentation I want to see relates to the initial proposal for a Haydock Heritage Trail and any subsequent iterations, adaptations and alterations of the proposal."

5. After several chasers by the requester, the Council finally responded on 24 September 2021 providing information it held within scope of the request.
6. The complainant requested an internal review on 28 September 2021 as he considered the response to be wholly inadequate.
7. On 15 October 2021, the Council responded to the request for an internal review stating that it had been incorrectly assigned and had only just been received by the relevant department, and that a full response would be sent by 26 October.
8. Despite the Commissioners intervention on 26 November 2021, and a number of further chasers by the complainant, the Council did not respond to the internal review request until 10 March 2022. They provided a copy of a map and a redacted email, and stated no further information was held, explaining that due to their retention policy, emails over two years old would have been deleted unless required to be archived.

## Scope of the case

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9. The complainant contacted the Commissioner on 28 October 2021 dissatisfied with the council's response. They were advised that they needed to exhaust the Council complaints procedure before the Commissioner could accept their complainant.
10. On 11 December 2021, the complainant contacted the Commissioner to advise they had not received a response to their internal review. The Commissioner accepted the case, due to the lack of an adequate response by the Council.
11. The scope of the case is for the Commissioner to determine whether the Council holds any further information falling within the scope of the request.

## Reasons for decision

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

12. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
13. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
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 complainant has observed that:

"The sole email that your extensive searches have found refers to the map being emailed to Andrew and Martin "towards the end of last year"., which means that map would have been sent in late 2019. Had my original request been dealt with promptly, in accordance with the law, the records covering the sending of the map would not have been destroyed in accordance with your 2 year retention policy, which has defeated the object of my original request." And "General accounting

practice require records to be kept for 6 years after a transaction. As the council does not, apparently hold any such records in respect of this request were those records never created or have they been deleted in breach of the 6 year limit?"

16. The Council has told the Commissioner that with regards the complainant's observations (as above):

"Searches were completed by all officers who had involvement with Heritage work. They searched local and shared drives and emails. Any information held in relation to the Haydock Heritage Trails would have been revealed in these searches. Information revealed in these searches was provided to the requestor. Key words were used, such as "haydock", "trail" and "heritage". Searches were also completed on the publicly available Council meeting agenda and minutes in relation to Heritage agenda items. One item was revealed, and a copy of the information was provided to the requestor.

The finance business support officer was one of the main contacts throughout the processing of the request. They confirmed on a number of occasions that the "£300K" was from earmarked balances, which had since been reassessed due to the budget pressures of the pandemic. There was no formal sign off for the heritage trail to be implemented, it was one of many projects that was being discussed in relation to the money, as such there are no formal financial documents in relation to the proposed scheme as it did not reach that stage in the process.

We do not record phone calls on our standard Council lines and as such any initial scoping exercises completed via telephone would not have been recorded, unless followed up with emails. Due to the timing of the searches, they did not reveal any emails from the early stages of the proposal due to retention periods.

Informal meetings are not minuted unless the officer decides to, in this instance no minutes from any informal meetings were revealed in the searches undertaken."

17. The Council has told the Commissioner that any information held would be held electronically, and "All emails are deleted after 2 years. If an email needs to be made into a permanent record, then the Officer will save it to a PDF file and retain alongside any other relevant information. This was not the case in this instance." The Council provided a copy of its Electronic Communications Policy as the relevant guidance document.

18. The Council has confirmed to the Commissioner that no information relevant to this request has been deleted or destroyed outside of its retention policy and has confirmed that it has carried out the most relevant searches with the most relevant people to establish what information it holds within the scope of the complainant's request.
19. The Commissioner is satisfied that the council has carried out relevant searches to determine the information it holds relevant to the request, and that it has adequately explained why certain information is not held.
20. The Commissioner therefore finds on the balance of probabilities that the Council has provided all the information it holds falling within the scope of the request.

### **Regulation 12(1)(b) of the EIR – The Public Interest Test**

21. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exemptions set out under regulation 12 of the EIR.
22. However, as no further information has been found to be held, the Commissioner can only find that the public interest in maintaining the exemption at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no further information to disclose.

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

23. Regulation 5(2) of the EIR states that information should be made available as soon as possible, and within 20 working days of receipt of the request.
24. In this case, it took the Council almost four months to provide its response to the complainant's request, and it only took such action following the intervention of the Commissioner.
25. The Commissioner therefore finds that the council has breached regulation 5(2) of the EIR.

### **Regulation 11 – Internal review**

26. Regulation 11(4) requires that the 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.
27. In this case, the Council was given a number of opportunities to conduct the internal review before the Commissioners intervention but failed to do so.

28. As the council has failed to conduct the internal review within 40 working days, the Commissioner has found there to be a breach of regulation 11(4) of the EIR.

**Other matters**

29. The Commissioner has concerns about the Council's general handling of this request, and, in particular, its failure to act following receipt of his correspondence of 26 November 2021, requesting that it now carry out an internal review.
30. The Commissioner records details of those cases (including those where a decision notice is not issued) where it is found that a public authority has failed to respond to a request, or an internal review request, within the prescribed time periods.
31. The Council must therefore ensure that there is no repetition of these issues in relation to future information requests. A failure to do so, and the receipt of similar complaints in the future, may lead the Commissioner to revisit this matter.

## Right of appeal

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32. 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)

33. 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.
34. 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 .....**

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