

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

Date: 4 April 2022

Public Authority: Sedgeberrow Parish Council
Address: clerk@sedgeberrowpc.org.uk

Decision (including any steps ordered)

1. The complainant requested information relating to a neighbourhood plan. Sedgeberrow Parish Council (the Parish Council) provided a link to what it considered to be relevant information but the complainant disputed that it satisfied his request.
2. The Commissioner's decision is that, on the balance of probabilities, the Parish Council does not hold any further information within the scope of the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 19 February 2021 the complainant wrote to the Parish Council and requested information in the following terms:

"Springfield nurseries applied for housing development previously W/88/1147/0.

It was refused, went to appeal, refused again. Due to many concerns including highways access and safety.

Wychavon planning tell me any revised plans would be available to view via neighbourhood planning group and parish Council website. I cannot find any detail or link".

Please advise detail on revised access proposed for springfield nurseries development”.

5. Following the Commissioner’s intervention, the Parish Council responded on or around 29 May 2021. It apologised for the delay in responding and explained that the requested information is already in the public domain. While it provided a link to the background papers of the neighbourhood plan, it did not explicitly cite which exemption or exception of FOIA or the EIR it is relying on to refuse the request.
6. Following an internal review the Parish Council wrote to the complainant on 11 June 2021. It advised that, having undertaken an internal review, the response is unchanged.

Scope of the case

7. Following earlier correspondence, the complainant contacted the Commissioner on 11 June 2021 to complain about the way his request for information had been handled.
8. He disputes that the Parish Council’s response answers his specific question.
9. In correspondence with the Parish Council, the Commissioner set out his view that the requested information, if held, was likely to constitute environmental information as defined in regulation 2(1) of the EIR.
10. The Parish Council did not comment on that view.
11. During the course of his investigation, the Commissioner found it necessary to issue the Parish Council with an Information Notice (IN). In accordance with his powers under section 51 of FOIA, the IN required the Parish Council to furnish the Commissioner with further information about its handling of the request for information. Specifically, the Parish Council was required to provide the Commissioner with its full and final submissions explaining what provision of FOIA or the EIR it is relying on to refuse the request and why.
12. While the Commissioner had concerns about the quality of the Parish Council’s response to the IN, he nevertheless considered it sufficient to progress his investigation.
13. This decision notice covers whether the requested information, if held, would be environmental, and considers whether the Parish Council holds any further recorded information falling within the scope of the request.

Reasons for decision

14. The Commissioner has first considered whether the request should be considered under FOIA or the EIR.

Is the information 'environmental information'?

15. Information is environmental if it meets the definition set out in regulation 2 of the EIR, namely:

"...any information in written, visual, aural, electronic or any other material form 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) and (b) 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 elements of the environment referred to in (b) and (c);"

16. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In

addition, there are some procedural differences affecting how requests should be handled.

17. The Commissioner has produced guidance¹ to assist public authorities and applicants in identifying environmental information. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
18. The requested information in this case relates to planning matters.
19. The Commissioner is satisfied that the requested information, if held, would relate to measures affecting the environment.
20. The Commissioner is therefore satisfied that the information, if held, would fall within the definition at regulation 2(1)(c) and that the request fell to be considered under the EIR.

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

21. Regulation 12(4)(a) of the EIR provides that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
22. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
23. In other words, in order to determine such complaints, the ICO must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
24. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is 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

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https://ico.org.uk/media/fororganisations/documents/1146/eir_what_is_environmental_information.pdf

unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The Complainant's view

25. The complainant considers that his request for information asked about the difference between the last planning application entrance and the latest application entrance. In his view, the response he received failed to satisfy the request.
26. By way of background, the complainant explained to the Commissioner that the proposal is part of Sedgeberrow Development Plan and that revised access has been agreed according to parish council minutes.
27. While he made reference to the minutes, he did not provide the Commissioner with details of them.

The Parish Council's arguments

28. In correspondence with the complainant, the Parish Council explained that the site put forward for consideration at Springfield Nursery is contained in the background papers of the neighbourhood plan.
29. It also told him:

"Previous planning applications in the main are noted, although only current planning guidance and regulations have been applied, not historical".
30. In response to the IN, the Parish Council told the Commissioner "there is no further information to give".
31. It further explained:

"To clarify, simply put, the complainant is asking to compare the access for two different planning applications when only one planning application exists".
32. It explained that planning information can be verified on the planning portal of Wychavon District Council.

The Commissioner's conclusion

33. 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 must hold, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set

out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.

34. The Commissioner acknowledges that the complainant does not consider that the Parish Council provided an adequate response to his request.
35. The Commissioner recognises that the planning application specified in the request for information was rejected in the late 1980's. On the basis of the Parish Council's correspondence, and his reading of the Neighbourhood Plan background papers, he understands that the site's suitability for development has been considered as part of the neighbourhood plan. On the same basis, he also understands that no formal planning application had been made at the time of the request for information.
36. While the complainant may believe that additional information should be held, the Commissioner has found no evidence which would indicate that the any further information is held that is relevant to the request.
37. As a result, the Commissioner has decided that, on the balance of probabilities, there is no additional recorded information held by the Parish Council that is relevant to the complainant's request.

Other matters

38. In his guidance², the Commissioner recognises that, rather than treat every enquiry as a formal request, it will often be more sensible, and provide better customer service, for a public authority to deal with it as a normal customer enquiry under its usual customer service procedures.
39. From the evidence he has seen, it appears that the Parish Council responded to the complainant's correspondence of 19 February 2021 as 'business as usual' correspondence.
40. However, in light of his intervention, the Commissioner would have expected the Parish Council to have considered it as a formal request for information and to have issued a formal refusal notice in accordance with the legislation.

² <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/receiving-a-request/>

41. The Commissioner recommends his guidance³, on what to do when a request for information is received, to the Parish Council.

³ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/receiving-a-request/>

Right of appeal

42. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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

Laura Tomkinson
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