

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

**Date:** 11 December 2023

**Public Authority:** Stockton-on-Tees Borough Council  
**Address:** Municipal Buildings  
Church Road  
Stockton-on-Tees  
TS18 1LD

**Decision (including any steps ordered)**

---

1. The complainant has requested information on comments made by the Mayor of the Tees Valley about a planning application being considered by Stockton-on-Tees Borough Council ('the Council'). The Council said that it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information.
3. The Commissioner requires no steps as a result of this decision.

**Background**

---

4. The request concerns public criticism made by the Mayor of the Tees Valley of a housing development planning application, being considered by Stockton-on-Tees Borough Council. He reportedly said:  
  
"...it should never have been validated as a legitimate planning application in the first place. The application is supported by less than minimal information including two plans and a design and access

statement. Something that is much less than expected for a valid permission to be validated for consideration.”<sup>1</sup>

## Request and response

---

5. On 12 May 2023, the complainant wrote to the Council and requested information in the following terms:

“Subject: Planning Application: No. 23/0261/OUT

I request full details be provided to me under the provisions of The Environmental Information Regulations 2004 and The Freedom of Information Act 2000, in respect of the above planning application in relation to:

1. All SBC [Stockton-on-Tees Borough Council] internal **information** (see below) concerning the Mayor’s comments on his social media feed and in the Gazette article in relation to the above planning application.
2. **Information** (see below) relating to all contacts with external organisations and individuals concerning the Mayor’s public comments on the above planning application.

The term ‘**information**’ is defined in section 84 of the FOI Act as meaning ‘information recorded in any form’.

I am seeking ‘any’ information in any form on the matters described in my request. For the avoidance of doubt, this would include, without being limited to, any record of any meeting, conversation or discussion on these matters, any reference to them in any email or other communication as well as any assessment, analysis, briefing, opinion or other forms of recorded information on them. In other words, ‘any information’.”

6. The Council responded on 8 June 2023. It said “no such records exist”.
7. On 1 August 2023, the complainant asked for information underpinning the Council’s media statement that “The submitted information for this

---

<sup>1</sup> <https://www.gazettelive.co.uk/news/teesside-news/600-objections-ridiculous-poor-wynyard-26740775>

application meets the national requirements for validation and is therefore considered to be valid”.

8. The Council responded on 2 August 2023, explaining that statements to the media come direct from its media team. No briefings had been provided, and the statement was formulated in response to verbal discussions with council officers.
9. On 7 August 2023, the complainant requested an internal review of the response to his earlier request of 12 May 2023.
10. The Council provided the outcome of the internal review on 30 August 2023. It maintained that it did not hold the information described in the request.

### **Scope of the case**

---

11. The complainant contacted the Commissioner on 11 September 2023 to complain about the way his request for information had been handled. He said:

“The focus of my request was information held by the Council on the development of their public response to criticism made by the Mayor of the Tees Valley relating to their management of a major planning application.

The Mayor’s statement had the potential to cause huge reputational harm to the Council, indeed it was very close to claiming maladministration.

In such circumstances and considering the complexity of the comments, I would have expected there to have been an extensive analysis of the Mayor’s statements and a review of the Council’s procedures to determine the facts and to develop an appropriate public response. Planners, legal advisors, senior managers, media officers, web site managers and perhaps even the monitoring officer should have been involved, any mix of which would require co-ordination and the generation of information.”

12. The analysis below considers whether, on the balance of probabilities, the Council holds information falling within the scope of the request.

## Reasons for decision

---

### Is the requested information environmental?

13. Regulation 2(1)(c) of the EIR states that environmental information includes information on:

“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”.

14. The Commissioner has considered the wording of the request. He notes that it is on a measure (planning) likely to affect the elements of the environment (regulation 2(1)(c) of the EIR). He has therefore assessed this case under the EIR.
15. This decision notice therefore considers whether the Council was entitled to rely on the exception provided by regulation 12(4)(a) of the EIR.

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

16. Regulation 5(1) of the EIR provides that a public authority that holds environmental information shall make it available on request. This is subject to any exceptions that may apply.
17. Regulation 12(4)(a) of the EIR states 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”.
18. 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 balance of probabilities, the public authority holds any information which falls within the scope of the request.
19. For clarity, the Commissioner is not expected to prove beyond reasonable doubt that a public authority does or does not hold further information. When determining a complaint, the Commissioner makes a decision based on the civil standard of the ‘balance of probabilities’ – that is, more likely than not.

20. The Commissioner's guidance<sup>2</sup> explains that the First-tier Tribunal has confirmed that, when making his decision, it is acceptable for the Commissioner to rely on the results of a public authority's searches, provided that those searches were appropriate and thorough.
21. It is therefore important for the public authority to demonstrate that it has carried out adequate searches.
22. In this case, when writing to the Council to commence his investigation, the Commissioner quoted the complainant's comments at paragraph 11. The Commissioner also directed the Council to his guidance and asked it a series of questions aimed at determining whether the requested information was held.
23. The Council responded:

"...there are no documents we hold to be released. No documents have been deleted or destroyed, therefore no retention of documents apply. There is no business purpose for retaining this information nor any statutory requirements."
24. The Council explained that, since 2018, it had been moving towards limiting the amount of paper documentation it holds and stores, with any such documentation being scanned and stored electronically. This practice was accelerated during the pandemic, well before the request in this case was received. It said, therefore, that it holds no paper records for the information specified in the request.
25. Electronic searches were conducted for the requested information. They covered personal computers, shared network drives and email folders. The searches used the search features within Outlook and Windows, to minimise human error.
26. The search terms used were words which would be likely to feature within the email/document title and/or associated text which related to the enquiry regarding the Tees Valley Mayor's public comments. The searched terms included the following; "Houchen"; "Wynyard"; "Mayor"; "23/0261/OUT" and "gazette". No information falling within scope of the request was recovered.
27. Council officers who had been involved with the planning application were consulted and they had no knowledge of the requested information

---

<sup>2</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-environmental-information/>

ever being held. The Council said that any review of the Mayor's social media post, and the media article, was likely to have been based on a short verbal discussion over content, and the Council's position.

28. Based on these comments, the Commissioner is satisfied that the Council has adequately explained why it does not hold the information requested and he is aware of no grounds to doubt this explanation.
29. The complainant has only given general reasons for believing that information is held, arguing that it is "inconceivable" that the Mayor's high profile and potentially damaging comments would not have generated some recorded deliberations. He has also cited wider concerns about the planning application not being subject to proper validation. However, there seems to be no specific, compelling evidence indicating that any recorded information is held in relation to this specific request.
30. The Commissioner notes that the complainant has also cited complaints that were submitted by third parties to the Council about the handling of requests for information they had made, in support of his complaint. Whilst these may demonstrate their dissatisfaction with the Council's responses, they do not, in themselves, reveal the possible existence of information relevant to this particular request.
31. Therefore, the Commissioner is satisfied in this case that, on the balance of probabilities, no information falling within the scope of the request is held by the Council.

## **Other matters**

---

32. The complainant has asked the Commissioner:

"When considering this appeal, I hope you can reflect not only on the Council's intentions in relation to its responsibilities under the FOI Act but also consider their response in the context of the Nolan Principles.

If you find the Council hold no information I firmly believe, based on this and many other examples, there must be a deliberate culture of avoiding documenting actions in relation to this application including when providing information in response to queries about it, even under FOI Act.

I would be grateful for your advice therefore on whether such a complaint, failing to document actions to avoid scrutiny through FOI requests, is within your remit or whether a more general complaint of maladministration due to the failure to follow the Nolan Principles to

the Local Govt and Social Care Ombudsman would be more appropriate.”

33. While acknowledging the complainant’s frustration that the Council does not hold the requested information, the Commissioner is mindful of the comments made by the Information Tribunal in the case of Johnson / MoJ (EA2006/0085)<sup>3</sup>, that FOIA:

“... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold”.

34. He considers that the same can be said for the EIR. When dealing with a complaint to him under the EIR, it is not the Commissioner’s role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or its reasons for holding some information, but not other information. Rather, in a case such as this, the Commissioner’s role is simply to decide whether or not, on the balance of probabilities, the information specified in a particular request, is held.

---

3

<http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

## **Right of appeal**

---

35. 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: 0203 936 8963

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)

36. 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.

37. 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 .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**