

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

**Date:** 3 May 2024

**Public Authority:** Guildford Borough Council  
**Address:** Millmead House  
Millmead  
Guildford  
GU2 4BB

**Decision (including any steps ordered)**

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1. The complainant submitted two requests relating to specific planning matters. Guildford Borough Council (the "Council") disclosed information. The complainant has raised concerns that the Council has not disclosed all the relevant information that it holds.
2. The Commissioner's decision is that the Council's responses to the requests fail to convincingly confirm that all relevant information held has been disclosed and do not comply with the requirement for a public authority that holds environmental information to make it available on request and that the Council has, therefore, breached regulation 5(1) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - In relation to each of the two requests issue fresh responses which identify and disclose information falling within the scope of the request and/or issue a fresh refusal notice under regulation 14 indicating the exceptions under the EIR the council is relying on to withhold information / confirm that information is not held.
4. The Council must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Requests and response

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### Request 1 – Council reference: FOI2022/00952

5. On 3 October 2022 the complainant wrote to the Council and requested the following information:

“Information on 22/P/01212 (52 Charlock Way), including:

  - Site visits, diary entries and measurements (of roof height and window height etc) during the applications.
  - Correspondence, advice given on the plans and the process including e-mails, letters, reports, faxes, file notes, notes of phone calls, videos, audio, digital recordings.”
6. The Council has stated that it responded to the request and disclosed all the relevant information that it holds.

### Request 2 – Council reference: FOI2023/00347

7. On 5 April 2023, the complainant wrote to the Council and requested the following information:

“1. We have provided evidence of what we believe to be unethical actions on behalf of the Planning Department. We would like all information relating to action taken/ investigated following that evidence being provided in line with the Authority’s code of conduct and governance standards. Please also provide the Authority’s code of conduct, governance standards and complaints process/ procedure which we have been unable to find publicly and have requested from GBC several times.

2. We have been made aware that in the first quarter of 2023 [redacted] guildford.gov email account was not working properly. Please provide information regarding the operation and performance of this email account within the period January to April 2023 (inclusive).

3. On 8 March we requested information from planning services requesting details on procedure for statutory consultees (and clarifying what should happen when both ward councillors are uncontactable, either through illness or a breakdown in the councils email system). This has not been responded to so we would like this provided under FOI along with any internal correspondence related to that request.”
8. The Council has stated that it responded to the request and disclosed all the relevant information that it holds.

## Scope of the case

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9. On 11 November 2023 the complainant contacted the Commissioner on to complain about the way their requests for information had been handled.
10. The complainant raised concerns about a number of requests they had submitted to the Council. The Commissioner has spent some time attempting to establish the relevant facts, including extracting the requests from correspondence dealing with other matters and ascertaining what information the Council disclosed to the complainant (and whether further information is or is not held and whether any information was being withheld under exemptions/exceptions).
11. The Commissioner also made attempts to resolve the matter informally through correspondence with both parties. As informal resolution was not possible in this case he has set out his conclusions about the Council's handling of the requests on the available evidence.

## Reasons for decision

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### Is the requested information environmental?

12. Regulation 2(1) of the 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. Although he has not seen the requested information, as it is information relating to decisions taken regarding planning matters, the Commissioner believes that the requested information is likely to be information on measures as defined in regulation 2(1)(c). For procedural reasons, he has therefore assessed this case under the EIR.

#### **Regulation 5 – duty to provide information held**

14. Regulation 5(1) of the EIR states:

“Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.”

15. In considering the Council’s compliance with regulation 5(1) in respect of the complainant’s 2 requests, the Commissioner has made attempts to establish what information the Council identified as falling within scope and what was disclosed to the complainant.
16. On the available evidence, the Commissioner considers that the Council has not demonstrated that it has either disclosed all the relevant information that it holds or properly confirmed that further information is not held. He, therefore, considers that the Council’s handling of these 2 requests does not comply with the duty under regulation 5(1) of the EIR and he requires the Council to reconsider the requests and issue fresh responses to the complainant.

## Other matters

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17. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

### Managing requests

18. The Commissioner is mindful that the complainant in this case has submitted several, on occasion, overlapping requests for information and that the Council has, in good faith, made attempts to deal with them in the same correspondence. An outcome of this, however, is that it becomes difficult for all parties to keep track of what is being requested and what has been addressed. The matter is compounded when multiple requests are addressed at the internal review stage.
19. As a result of this the Commissioner has experienced difficulty in establishing the relevant facts in this case, resulting in a prolonged investigation.
20. The Commissioner recommends that, in future, the Council should ensure that its responses clearly identify the request / internal review, that is being responded to and, where possible, does not deal with multiple requests in the same correspondence.
21. The Council should also attempt to clearly identify what information is being disclosed within its responses so that this can be referenced should a complaint be subsequently made. Similarly, where information is not held this should be confirmed and, if relevant, records of searches carried out for information kept.
22. More generally, where an authority has concerns about the burden imposed by a request, for example, in the context of a pattern of requesting, there are mechanisms within the EIR for managing this. In such cases authorities should consider the relevance of regulation 12(4)(b) – the exception for manifestly unreasonable requests.<sup>1</sup>

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/>

### **Advice for requesters**

23. Whilst authorities generally have a duty to respond to requests however they are submitted the Commissioner considers that requesters should be mindful of the potential burden that a pattern of requesting can create.
24. Submitting supplementary requests alongside requests for internal review, and raising other issues in the same correspondence can add to the problems identified under "managing requests" above. In addition to potentially tying up the resources of an authority such an approach can also be counterproductive and make it more likely that any response received will be unsatisfactory.
25. The Commissioner recommends that potential requesters should refer to his "How to write an effective request for information" guidance which is published on his website<sup>2</sup>.

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<sup>2</sup> <https://ico.org.uk/for-the-public/official-information/preparing-and-submitting-your-information-request/>

## **Right of appeal**

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26. 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)

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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