

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

**Date:** 17 May 2021

**Public Authority:** Petworth Town Council  
**Address:** The Old Bakery  
Golden Square  
Petworth  
West Sussex  
GU28 0AP

**Decision (including any steps ordered)**

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1. The complainant has requested information regarding the relocation of a children's play area.
2. The Commissioner's decision is that, on the balance of probabilities, Petworth Town Council does not hold any further information which is within the scope of the request.
3. The Commissioner does not require any steps.

## Request and response

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4. On 2 July 2020, the complainant wrote to Petworth Town Council ('the council') and requested information in the following terms [numbering added by the ICO]:

*"[1] Correspondence and the minutes of meetings detailing information regarding the proposal and final decision to re-site new equipment for the play park on [redacted] from the existing play park to the west of [redacted] to land directly in front of the one bedroom dwellings of [redacted]. This should have been documented prior to the erection of the new play park equipment in November 2015. [2] I would like to see written evidence of where this was discussed and [3] by whom and which councillors agreed to and rejected this re-location from the existing play park as I am unable to find reference to this having tirelessly printed and read through the minutes of both the full council and the open spaces meetings back to the beginning of 2014.*

*[4] Correspondence and minutes relating to the alleged refusal for permission by [redacted] to re-site the play park to the south of [redacted] opposite the fast food van.*

*[5] A certificate issued by ROSPA declaring the new play park equipment was fit for purpose upon completion."*

5. The council responded on 29 July 2020 and provided information within the scope of the request, being:

- The document named "Post Installation Report".
- The council meeting minutes of 16 July 2015, when the council agreed to award the contract for the play area works.
- A plan of the new play area
- A copy of the contract between the council and the contractor.

The council stated that no further information is held.

6. The complainant requested an internal review on 31 July 2020, in which they also made a further information request:

*[6] "I would like to know which councillor took it upon themselves to re-locate the play park from its original site and build it directly outside one bedroom dwellings and why this was never discussed or agreed with any other members of the council?"*

7. The council wrote to the complainant on 10 August 2020 with the outcome of its internal review. In relation to [6] it advised "The Town Council's Open Spaces Committee reviewed the location of the Play Area

*at their meeting on 5th August 2020 and resolved not to take any action.”* The council also provided further information in relation to [5], including details of inspections and an inspection report dated 2019.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 3 September 2020 to complain that the council had not provided all of the information in scope of the request. Specifically that, the council should hold a record of the decision regarding the relocation of the play park, and the names of councillor(s) making the decision.
9. The Commissioner notes that the item [6] takes the form of two questions. Both questions infer that a particular course of action was taken by the council. Although the information regulations do not require an authority to answer direct questions rather than requests for recorded information, the Tribunal has decided that if recorded information is held which can respond to a question then that information should be considered for disclosure to the requestor. Therefore the Commissioner considers that item [6] is also request for any information held by the council that identifies how the decision was made and by whom.
10. The Commissioner considers that the scope of the case is to determine whether, on the balance of probabilities, the council holds any further which records the decision to relocate the play park, and the names of councillor(s) making the decision.

## **Reasons for decision**

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### **Regulation 2(1) - Environmental Information**

11. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
12. Regulation 2(1) of the EIR defines environmental information as 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...emissions...and other releases into the environment, likely to affect the elements 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;...”.
13. Information about a plan or a measure or an activity that affects, or is likely to affect, the elements of the environment is environmental information. The information in this case relates to plans to change the use of land, being the relocation of the play park.
14. The Commissioner finds that the information requested is environmental information and she has therefore considered the complaint under the EIR.

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

15. 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.
16. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant’s evidence and argument. She will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held.
17. The Commissioner is mindful of the Tribunal’s decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it was stated that *“there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority’s records”*. It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner applies in this case.

18. In discussing the application of the balance of probabilities test, the Tribunal stated that, *"We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."* The Commissioner has therefore taken the above factors into account in determining whether or not further information is held, on the balance of probabilities.

#### *The complainants view*

19. The complainant considers that the decision regarding the relocation of the play park should be documented. Specifically that the agreement to the proposal should be included in council minutes and the names of councillor(s) making the decision should be available.
20. The complainant is concerned that a lone councillor may have been able to make the decision without the backing of other councillors. The complainant has expressed concerns that the proposal would have been rejected if it had been considered more fully.
21. The complainant is unhappy that work commenced on the change of location without the proposal and decision being made available to the public such that concerns could be raised.

#### *The council's response*

22. By way of background, the council advised that the matter regarding the location of the play area would have been discussed by a council committee. It stated that no individual councillor has the power to make decisions on their own. Furthermore it stated that the requirements of the landlords at impacted sites must have been taken into consideration.
23. Although the council advises that the decision would be made by a council committee, it has stated to Commissioner that *"there is no record of the detailed discussions that took place at that time."*
24. In response to the Commissioner's questions on the matter the council advised that:

- Information in scope of the request could be held in either manual or electronic records and that both had been searched.
  - Searches were undertaken on all of the council's manual and electronic folders which included minutes of meetings and email records.
  - The searches included all information held on the town clerks laptop device. There are no other electronic storage devices used by the council.
  - The search terms included the play area and locations names.
  - There are legal obligations under the Local Government Act 1972 to retain all minutes from the council's meetings. No records that were in scope of the request had been destroyed or deleted.
25. The council submits that the complainant has been given all the information that is held in regard to the play area. It stated that it has responded to the requests in as much detail as possible.
26. The council advised the "*Town Council's Open Spaces Committee*" had reviewed the new location of the Play Area on 5th August 2020 and resolved to not take any further action. It stated that it provided the complainant with numerous reasons for this decision on 10 August 2020.

### *Conclusion*

27. In coming to her conclusion, the Commissioner has considered the issues raised by the complainant, and their view regarding why further information should be held by the council. The Commissioner has also considered the responses provided by the council during the course of her investigation.
28. The Commissioner is sympathetic with the complainants position that a decision made by the council with an impact on the local community should be recorded somewhere.
29. However, the Commissioner is mindful of the purpose of the EIR, being that it gives the public the right of access to recorded information that is held by a public authority. It is not concerned with what information a public authority 'should' hold, only those records that 'are' held. The Commissioner must therefore conclude whether, on the balance of probabilities, the council is likely to be holding further recorded relevant information beyond that which has already been disclosed.

30. The Commissioner has considered the information provided regarding the review of the new location, which was undertaken by the Open Spaces Committee subsequent to the location change. Whilst the information may well have been shared to be helpful, it does not address the scope of the request, being for information about the original decision.
31. Having considered the council's submissions, the Commissioner is satisfied that the council has undertaken sufficient searches for the requested information and that it has confirmed that no information was destroyed or deleted in scope of the request.
32. The Commissioner understands the importance of the request to the complainant. She appreciates why the complainant considers that further information should be recorded. However, the Commissioner has not found there to be any evidence which undermines the council's position that it has provided all of the information it holds that is relevant to this request.
33. Taking all of the above into account the Commissioner is satisfied that, on the balance of probabilities, no further information in-scope of the request is held by the council.

## Right of appeal

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34. 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)

35. 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.
36. 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**  
**Head of FOI Casework and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**