

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

Date: 16 July 2024

Public Authority: Stratford-on-Avon District Council
Address: Elizabeth House
Church Street
Stratford-upon-Avon
Warwickshire
CV37 6HX

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence from 2018, between a property management company and Stratford-on-Avon District Council ('SADC'). SADC said that communications with its planning department were routinely deleted after four years, in line with its records management policy. Targeted searches provided additional confirmation that it did not hold the requested information. It refused the request under regulation 12(4)(a) (Information not held) of the EIR.
2. The Commissioner's decision is that, on the balance of probabilities, SADC does not hold the requested information.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 20 October 2023, the complainant wrote to SADC and requested information in the following terms:

"Our Management company, Betts Estates of Bank House, Whitley Road, Worcester WR6 6PB, claim that on 5th July 2018 they sent an

updated MFB [sic] to Stratford District Council Head of Planning, [name redacted] requesting an amendment to the original FPCR management plan.

Betts quote [the Head of Planning] confirming 'I am also very happy to agree to what you have proposed here as being in accordance with the spirit of the original condition and reflecting best practice and the on site circumstances which prevail as of now'

Please provide detailed copies of all correspondence between [the Head of Planning] and Betts Estates relevant to this issue."

5. SADC responded on 23 October 2023, stating that it was unable to locate any relevant information and asking for clarification.

6. The complainant responded on 31 October 2023, stating:

"For clarification MFB should read MPB and I understand it relates to an updated management plan for the estate altering the original planning consent thereby amending the covenants each resident signed up to. Clearly this should have been done with consultation, and possible changes to our legal Deeds and TP1.

Therefore, please review this additional clarification and comply with my original request for documents and correspondence relating to this exchange with [the Head of Planning] on 5th July 2018 or thereabouts."

7. SADC responded on 21 November 2023, explaining that the searches it had conducted had not located any information. It refused the request under regulation 12(4)(a) of the EIR but said it would reconsider it if more clarification could be provided.

8. The complainant contacted SADC again on 10 December 2023, expressing dissatisfaction with the scope of the searches. He asked that an internal review conduct a more comprehensive search, considering all amendments or changes relating to the original planning approval for the property in question.

9. SADC provided the internal review on 2 February 2024. It explained that further searches had not located any relevant information. It noted that the request asked for information which was more than four years old and that any relevant emails may no longer exist because emails are deleted from the council's systems after 4 years.

Scope of the case

10. The complainant contacted the Commissioner on 4 March 2024 to complain about the way his request for information had been handled. He remained unconvinced that SADC had searched sufficiently for any information falling within scope of his request. He also queried SADC's four year document retention policy.
11. The analysis below considers whether, on the balance of probabilities, SADC holds any information falling within the scope of the request.

Reasons for decision

Is the requested information environmental?

12. If information falls within the definition of "environmental information" at regulation 2(1) of the EIR, any request for it must be considered under the EIR.
13. Regulation 2(1)(c) of the EIR applies to information on:

"(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..."
14. As it is information relating to planning consent, the Commissioner believes that the requested information is likely to be information on measures (regulation 2(1)(c)) as they affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

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

15. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
16. Regulation 12(4)(a) allows a public authority to refuse to provide the requested information if it does not hold it at the time the request was received.
17. In cases where a dispute arises over the extent of the information held by a public authority, the Commissioner will take account of a number of factors when considering whether the information is, or is not, held, including:

- any evidence or arguments provided by the complainant;
 - any searches carried out by the authority to check whether the information is held;
 - any reasons offered by the public authority to explain why it knows the information is not held; and
 - any reasons why it is inherently likely or unlikely that information is held.
18. The Commissioner is not expected to prove beyond reasonable doubt that a public authority does, or does not, hold 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.
19. SADC's position is that it does not hold the information described in the request. It explained to the Commissioner that when the request was received, its retention period for any information potentially falling in scope was four years. This meant any relevant information would likely have been routinely deleted in accordance with its retention policy, during 2022 (ie prior to the request being received in October 2023).
20. Nevertheless, for completeness, SADC said it had conducted comprehensive, targeted searches for any remaining relevant information, both when dealing with the request, and when responding to the Commissioner's enquiries. Its searches had not returned any information falling within scope of the request.
21. It described the locations that had been searched and the search terms used. The planning team and IT team were consulted to ascertain if staff used personal computers for their work and if any information would be stored elsewhere than the council's official system. It was confirmed that all such records could only be held on the council's official system and in no other place. The subsequent system searches covered the system, OneDrive and email inboxes. They included time frames that were outside of the parameters specified in the request, which SADC felt it should nevertheless search, to ensure that nothing was being missed.
22. On receipt of the Commissioner's letter of investigation, SADC conducted further searches:
- "...for openness and transparency, another officer conducted a fresh and wider search to include all the phases [sic] previously searched, but they yielded no results.

In conducting this response on 24th June 2024, another search was conducted to include the following.

- 1) "Betts Estates"
- 2) "MPB"
- 3) "FPCR management plan"
- 4) [the Head of Planning]
- 5) The current planning manager's emails
- 6) The WHOLE of Planning

All these searches done on 24th June 2024 yielded no results..."

23. The Commissioner finds the submissions provided by SADC regarding the searches undertaken, and its document retention policy at the time, sufficiently explain why it does not hold the requested information. By the time the request was submitted, it is highly likely that any relevant information, if held, would already have been deleted/destroyed, in accordance with SADC's then document retention policy. Subsequent thorough and structured searches have confirmed that no information falling within scope can be located.
24. Based on the evidence available to him, the Commissioner finds that, on the civil standard of the balance of probabilities, at the time it received the request, SADC did not hold the requested information.
25. When considering the public interest test, the Commissioner can only find that the public interest in maintaining the exception at regulation 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because the information is not held.
26. The Commissioner is therefore satisfied that regulation 12(4)(a) applies and he does not require SADC to take any further steps in this case.

Other matters

27. SADC has explained to the Commissioner that in view of the issues raised by this complaint, it has decided to increase its retention period for communications with its planning department, from four years to 6 years.

Right of appeal

28. 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

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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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