

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 25 January 2016

**Public Authority:** Department for Communities and Local Government ("DCLG")

**Address:** 2 Marsham Street  
London  
SW1P 4DF

### **Decision (including any steps ordered)**

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1. The complainant has requested recorded information which relates to Planning Application 12/P1058 and related applications, in particular to the Secretary of State's decision to revoke a planning permission to expand Dundonald Primary School, Wimbledon. The DCLG initially withheld some information from the complainant in reliance on Regulation 12(4)(e) of the EIR. Following the Commissioner's intervention, the DCLG decided to disclose to the complainant all of the information it had previously withheld.
2. The Commissioner's decision is that the DCLG has complied with Regulation 5(1) of the EIR by virtue of having disclosed all of the information it holds relevant to the complainant's request. He has also decided that the DCLG has contravened Regulation 5(2) of the EIR by failing to disclose all of that information within the twenty day compliance period.

### **Request and response**

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3. On 9 March 2015, the complainant wrote to the DCLG and requested information relating to Planning Application 12/P1058 and related applications. The complainant asked for:

"The Department's notes, emails or reports made for the Minister in relation to the revocation of grant of planning permission for Dundonald."

4. The DCLG responded to the complainant's request on 1 April. The DCLG, advised the complainant that it held information within the scope of her request and it provided some of that information. Certain pieces of information were redacted of personal data under Regulation 12(3) of the EIR, and other information – principally any recommendations, considerations or non-factual information, was redacted or withheld under Regulation 12(4)(e).
5. Having received the DCLG's response, the complainant wrote again to the Department on 13 April to ask for an internal review. In her letter, she complained to the Department that the information it had provided is "patchy and incomplete" and that it does not provide the facts or specify the legislation on which the Minister made his decision to allow the planning application to stand.
6. The complainant asserted that the Minister had described the application as being "in breach of policy" and she further asserted that the disclosed information does not adequately demonstrate why the Minister finds it in the public interest to allow this planning application to stand where there is unequivocal evidence to show that the grant was based on misrepresentation by the applicant of several key material considerations.
7. The DCLG wrote to the complainant on 10 June to inform her of its final decision. The DCLG did not review its redaction of personal data under Regulation 12(3) as the complainant had not complained about them. Consequently the review was only concerned with the redaction or withholding of information under Regulation 12(4)(e).
8. The DCLG's decision was to uphold its application of Regulation 12(4)(e). The review found that the DCLG had withheld recommendations made to the Minister made by departmental officials and that there was a need to protect the safe policy space in which those recommendations are considered. The review pointed out that, although factual information was released, any recommendations, considerations, and non-factual information falling within scope of the request were withheld as internal communications, since they constitute communications between civil servants working for the DCLG and a Minister of State.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 10 September 2015 to complain about the way her request for information had been handled. The complainant was concerned that the DCLG had not disclosed all of

the information which she had asked for and which she believes the Department holds.

10. The Commissioner's initial investigation was focussed on the DCLG's application of Regulation 12(4)(e) to the information it was withholding.
11. Following the Commissioner's enquiry of 28 October, the DCLG determined that it could now make a full disclosure of the information which the complainant seeks.
12. The complainant received the previously withheld information and determined that the DCLG was likely to hold further information relevant to her request and which it has not disclosed.
13. The complainant informed the Commissioner that she considers that the information does not explain the decision taken by Eric Pickles on the advice of the Department. The complainant made the following assertions:

*"Although the Secretary of State's powers are discretionary in this case, he nevertheless has to base his decision on evidence available to him, on statute and on agreed policy. His decision has to flow from these considerations and has to be rational. In this case the Minister's decision not to intervene in a planning application was because, according to a formal letter from DCLG, "the proposal does not conflict with national policy". When I challenged this decision, the Minister amended his answer to "the proposal does not conflict with national planning policy to such an extent as to warrant the Secretary of State revoking the permission".*

*However, the documents supplied by the DCLG do not provide the Minister with any information on planning policy, nor is there any evidence as to whether the scheme conflicts or not, so it is difficult to see how he could have reached his conclusion.*

*Before taking his decision, the Minister had to be made aware by his department of all of the relevant facts. The fact that the DCLG said that there was no evidence of a conflict with the National Planning Policy Framework, yet the Minister in his final decision says that there is a conflict (albeit not a major one), shows that the Minister must have received other advice from his department. Otherwise his decision was made on the wrong basis and is challengeable in law.*

*In addition to the above, there are several other inconsistencies in the document provided by the DCLG which call into question the soundness of the Minister's decision, and for this reason I am doubtful whether all of the information requested in my FOI has been supplied.*

*Please note that I asked for all documents which constituted advice given to the Minister (which might include notes of meetings or emails to the Minister mentioning specific facts etc.). None of these have been supplied, and the DCLG has not given any indication of the reason for them being withheld."*

14. On 10 December 2015, the Commissioner wrote the DCLG to convey the complainant's assertions and to enquire whether the Department holds any further information relevant to the complainant's request which it continued to withhold. This notice sets out the Commissioner's decision.

## **Reasons for decision**

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### **Regulation 5 – the duty to make environmental information available on request**

15. Under Regulation 5(1) of the EIR, a public authority holding environmental information is obliged to make that information available on request.
16. Under Regulation 5(2) the Council is required to provide the information as soon as possible and no later than twenty working days from the receipt of the request.
17. The DCLG responded to the Commissioner's enquiry on 23 December 2015, confirming that 'all information relevant to [the complainant's] request held by the National Planning and Casework Unit ("the NPCU") has been disclosed', other than information which comprises the personal data of third parties. The DCLG also confirmed that the requested information would not be held elsewhere in the Department.
18. Confirmation was given regarding the searches the DCLG had undertaken to locate information which is relevant to the complainant's request within the NPCU. Searches were made of the hard copy paper file associated with this matter and searches were made of all email records and of the NPCU's electronic file storage system – including its shared and personal drives. The DCLG informed the Commissioner that these searches would retrieve any records relating to the complainant's request as the information is not stored anywhere else, or in any other way.
19. The DCLG advised the Commissioner that, under its records management policy, information required for the record should not be stored in personal drives. Notwithstanding this, the Department

searched personal drives for completeness because its staff uses laptop computers to occasionally draft documents 'offline'.

20. The NPCU electronic records were searched using the terms 'Dundonald' and 'Revocation'. These terms were considered appropriate, as the complainant's request concerned requests for the Secretary of State to use his powers<sup>1</sup> to revoke the planning permission for the expansion of Dundonald Primary School, Wimbledon. The DCLG determined that its search terms would locate any relevant information.
21. The DCLG informed the Commissioner that the NPCU may hold records which are both paper-based and electronic. Whether a document is saved in either of these formats depends on the form and size of the documents it receives. Searches were undertaken of both formats to ensure no relevant information was overlooked.
22. The Commissioner asked the DCLG whether any information relevant to the complainant's request had been deleted or destroyed. In response to this enquiry the DCLG informed the Commissioner that:

'Drafts or submissions and associated correspondence which comment on these drafts are routinely deleted at the point where the final version is agreed; this would have occurred prior to the complainant's request being received. All final versions of records relating to NPCU casework decisions are kept both electronically and hard copy, this ensures that there is an audit trail behind each decision made by the NPCU.'
23. The DCLG also advised the Commissioner that its records retention policy states that case records, such as those held by the NPCU, should be retained for 5 years. This retention period satisfied the Department's need to retain records concerning the consideration of planning casework.
24. The Commissioner has considered the DCLG's response to his enquiries and also the complainant's assertions which are repeated at paragraph 13 above. In the absence of any evidence to the contrary, the Commissioner finds the DCLG's representations to be wholly reasonable and therefore he has decided that, on the balance of probabilities, the DCLG is now likely to have disclosed all of the information it holds which is relevant to the terms of the complainant's request. The Commissioner's decision is that the DCLG has complied with Regulation 5(1) of the EIR.

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<sup>1</sup> See Section 100 of the Town and Country Planning Act 1990

25. The Commissioner notes that the DCLG disclosed some information to the complainant only after the Commissioner had made his initial enquiry. That disclosure was therefore made after the twenty day compliance period had expired and therefore the Commissioner finds that the DCLG has contravened Regulation 5(2).

## 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.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.

**Signed .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**