

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

Date: 25 July 2017

Public Authority: Historic England
Address: The Engine House
Fire Fly Avenue
Swindon
Wiltshire, SN2 2EH

Decision (including any steps ordered)

1. The complainant requested correspondence with a named person since 2013. Historic England (HE) confirmed that they did not hold any further information. The complainant considered that more information must be held. The Commissioner's decision is that HE does not hold any further information in this case. The Commissioner does not require HE to take any steps.

Request and response

2. On 5 October 2016 the complainant requested the following information:
'Under the Freedom of Information Act 2000, please provide me with copies of the following: Copies of all correspondence and e-mails between English Heritage/Historic England and [redacted name X and address] and/or any person acting on his behalf since June 2013.'
3. On 26 October 2016 HE responded that the request had been processed under EIR and confirmed that HE held one email within the scope of the request *'The email in question was sent to [redacted name Y] and is dated 17 March 2016 (17:18). I understand that you are already in receipt of this email.'*
4. There followed some correspondence questioning this response and on 6 December 2016 the complainant requested an internal review:

'I am most surprised (and disappointed) that you have failed to find further emails between [redacted name Y] and [redacted name X] as I have received written confirmation of their existence from a totally reliable source.'

5. On 13 January 2017 HE provided the outcome of its internal review:

'I have checked whether the local HE office which dealt with this matter has other correspondence that relates to your request. They do not. I therefore conclude that your original request was handled correctly...

Moving on from that, however, the local office case manager and the Historic England Planning Director for your region are both keen to assist you. To that end they have offered to meet you'

Background

6. The complainant provided a background to his request:

'The request arises from a series of planning applications made by [redacted name X] to convert the Castle Pavilion from a stable to a domestic dwelling. Because this building is adjacent to Kenilworth Castle the opinion of HE was very important to the outcome. For the first two applications HE opposed. For the third, it recommended allowance. The request for correspondence is to understand why HE made such a significant change in opinion.'

7. HE also provided some background to the email that was provided:

'[redacted name Y] met [redacted name X] on site on 26 February 2016, which led to the email in question. The meeting is recoded in my electronic diary as a simple appointment: I presume this does not need to be disclosed? I did not respond to this email directly, but rather when the next planning palliation came in I offered our views on the scheme.'

Scope of the case

8. On 13 February 2017 the complainant contacted the Commissioner and after providing further correspondence, the case was accepted on 26 May 2017. He considered that more emails must exist following his FOIA request to Warwickshire County Council.
9. The Commissioner's investigation has therefore concentrated on whether, on the balance of probabilities, HE has released all the relevant

information it held at the time of the request and has complied with its obligation under regulation 5(1) of the EIR.

Reasons for decision

10. Regulation 5(1) of the EIR says that a public authority that holds environmental information must make it available on request.
11. 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, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. As is the practice in a case such as this, the Commissioner asked HE a number of questions to confirm/establish if further information is held.
14. In response to the Commissioner's questions about the location of the information, HE confirmed that it had released one email and confirmed that it did not hold any further recorded information falling within the scope of the request.
15. The Commissioner asked HE a number of questions to establish what searches had been carried out for information falling within the scope of the request. HE stated that the information could be held in either manual records in a paper file, or electronic records:

'The request was sent to the Property Manager for Kenilworth Castle, who confirmed that she did not hold any information that fell within the scope of the request. I attach this email for information.

The request was then passed to the Principal Inspector of Historic Buildings and Areas – West Midlands, and the Estates Surveyor for Historic Properties - West.

Comprehensive searches of both email and manual paper files were carried out, and the Estates Surveyor confirmed a nil response for electronic data on 20 October, and the Estates Office Administrator confirmed a nil response for manual paper files on the same day. I attach this correspondence for information.

On 24 October the Principal Inspector of Historic Buildings and Areas confirmed that he had searched both his electronic and paper files, and located one email which fell within the scope of the request. This was sent to our team and subsequently provided to the requestor under the EIR. I attach this correspondence for information.

16. HE confirmed to the Commissioner that the searches carried out included information held locally on personal computers and on networked resources and emails. *'E-mails were searched by means of the relevant surname, '[redacted name X]', and in addition a more extended search for the name of the site, which included 'Kenilworth' as well as more specifically 'Castle Pavilion' was carried out. These same searches were repeated more recently following your letter on 6 June.'*
17. The Commissioner asked questions on whether any recorded information ever held relevant to the scope of the request had been deleted or destroyed. HE answered:

Having looked into this it is possible that electronic information that fell within the scope of the request could have been deleted or destroyed as part of standard retention practices and mailbox management. I do not believe that any manual information relevant to the request has or would have been destroyed to date... staff regularly clear down their inboxes as part of their normal course of business in order to keep mailboxes to a manageable size, and so it is possible that electronic information that was not significant to our formal advice sent to the Local Planning Authority, for example arranging meetings, could have been deleted.'

18. The Commissioner received information about HE's formal records management policy on the retention and destruction of records of this type:

'based on the above guidance for our corporate records, I do not believe that any information would have been destroyed as the case is less than 15 years old..'

staff regularly clear-down their inboxes as part of their normal course of business in order to keep mailboxes to a manageable size. I do not believe that any information has been deleted that had been extracted from an inbox and formally placed on a manual or electronic file...

Emails are regularly and routinely deleted from mailboxes and are no longer accessible. Emails of note are printed and placed on paper files or on our electronic planning and grants casework management system called Concase. I can confirm that in addition to the paper files of relevance to this request, the electronic files and databases have all

been checked, and I am confident that if there were copies of any electronic data on manual files, the comprehensive searches of individual files by our experienced personnel in the Local Offices would have located them.'

19. In answer to a question on any business purpose for which the requested information should be held, HE stated:

'We retain emails which contain significant information where this is not included in our formal advice (which is a matter of public record). Emails which are simply setting up meetings or confirming them would be deleted once outdated as management of email boxes.'

20. HE also stated that it is *'not aware of any statutory requirement. Our formal advice to the Local Planning Authority is considered to be in the public domain once submitted to the Local Planning Authority.'*

21. The Commissioner asked if there is any information held that is similar to that requested and has HE given appropriate advice and assistance to the applicant in line with the duty contained at regulation 9 of EIR? He replied:

'No. I consider the request to be very clear and straightforward in its scope for correspondence between English Heritage/Historic England and a named individual and anyone acting on his behalf since June 2013, and therefore I do not believe that HE could offer any additional advice and assistance to the requestor that would be of assistance in this case.'

I can confirm that we contacted the relevant staff of Historic England and English Heritage, informing them of the request and asking to be sent copies of all relevant correspondence held. I received a nil response from English Heritage, and one email from Historic England staff which has been provided to the requestor.'

22. In summary HE confirmed that *'neither English Heritage nor Historic England holds any correspondence aside from the one email that has been provided to the requestor. I can say this with confidence as the searches for any relevant information have been both wide ranging and thorough, involving a number of different teams and staff members.'*

23. The Commissioner has considered the above responses provided by HE and the copies of emails sent as evidence of the searches made by HE for information within the scope of the request.

24. The Commissioner has also considered the reasons why the complainant considers further information may be held. The Commissioner has been provided with the FOIA response from Warwickshire County Council (the Council) to the complainant stating that *'[redacted name X] confirmed*

that he had sent emails from his Warwickshire County Council email address to Historic England but that these were personal emails and did not relate to Council Business.'

25. The Commissioner notes that there may have been other emails to set up the meeting between [redacted names X and Y] in February 2016 which would explain the plural 'emails' used by the Council above. The Commissioner also notes from the background (see paragraph 7 above) that HE did not reply directly to the disclosed email of 17 March 2017.
26. Although the Commissioner understands the reasons why the complainant considers further information may be held, the Commissioner can only consider what is held by HE. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, she cannot require a public authority to create the information under FOIA/EIR.
27. The Commissioner considers that the searches that HE has undertaken for any information within the scope of the complainant's request have been satisfactory. On the balance of probabilities, she is prepared to accept that, at the time of the request, HE held no further relevant information.
28. As the Commissioner's decision is that the information is not held, the Commissioner does not require HE to take any steps.

Right of appeal

29. 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

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

30. 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.
31. 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

Pamela Clements
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