

# MK Scrutiny Committee Meeting

1<sup>st</sup> September 2021

Agenda Item: Information Governance

Written submission by Andrew McGrandle

At an earlier Scrutiny Committee meeting on 17<sup>th</sup> February 2021 I submitted a verbal report to the committee under an agenda item concerning a report made to the DCC by Myles Joyce. In my verbal submission I mentioned the problems I had experienced with the Freedom of Information department at MKC. I am grateful for being informed of the meeting on the 1<sup>st</sup> September regarding this very issue, and for the opportunity to contribute my viewpoint.

I want to confess that I am a Freedom of Information request virgin – I have never made such a request before nor have I ever had to deal with the Information Commissioner's Office (ICO). It has turned out to be a very frustrating and time consuming exercise having to deal with an MK council department whose default position in dealing with the public appeared to be ***"refuse everything and throw out lots of stumbling blocks until they give up"***.

Before making the FOI request my first research was with the Government's own 2015 Local Government Transparency Code where in the opening sections describing the context of the policy and code it states in item 4:

***"The Government believes that in principle all data held and managed by local authorities should be made available to local people unless there are specific sensitivities (eg. protecting vulnerable people or commercial and operational considerations) to doing so. It encourages local authorities to see data as a valuable resource not only to themselves, but also their partners and local people"***.

In the ICO's own guidance document for the public entitled "How to access information from a public body" it states:

***"Under the Freedom of Information Act and the Environmental Information Regulations you have a right to request any recorded information held by a public authority, such as a government department, local council or state school"***.

Just over 17 months ago I made a Freedom of Information request for four documents relating to a planning application in Emberton (see email string, specifically email number 1, below for details). My requested documents were all refused and the reason given for the crucial decision document was ***"Data not held. No written notification was given and there is no record held of any telephone calls made"***.

In disbelief, and after adding extra information to my request, I asked again and was refused again. This was followed in February 2020 by a formal Level 2 Complaint which met with the same response – the document doesn't exist, and that is how it was left until October 2020 when a report written by Myles Joyce for the DCC made reference to this non-existent document, and even quoted from it. So in October 2020 I made a fourth request

for this document citing the comments in Mr Joyce's report, and to my complete surprise I got another refusal.

My last option was with the ICO. They took up the case and contacted MKC in December with their concerns and then **in February 2021 I received the document I'd been trying to get for a year and this proved that data WAS held, and that written notification WAS given and that at least one telephone call was made and that I had been lied to by MK's Planning and FoI Departments throughout this long process.** The reasons why the planning department chose to withhold the document became very clear and that will be the subject of a subsequent Scrutiny Committee meeting that was postponed in February 2021 awaiting the Decision Document from the ICO.

Of the other three documents, one was supplied by the Deputy Chief Executive who has a far more enlightened view of what constitutes a public document than the planning department, and the other two the ICO concluded that they did not exist. These latter two document decisions only confirmed what I had already suspected that the enforcement officer failed to take any notes or photos on a site visit, even in the case of a criminal offence, and the planning department misled the DCC and DCP in two written and verbal reports that a stop notice had been issued when it hadn't. I know that the residents of Willen and Blakelands have experienced identical problems to this with the planning and enforcement department in their specific planning cases, and curiously they all involve the same planning officer. For further details of these documents please see email number 7 section 1.

**If any of the committee members would like to know the details of how difficult it is to get public documents out of MKC, and how there appears to be a policy of "refuse everything" then I would urge you to read the chronological email trail reproduced below. In these emails you will see how MKC changes the story on certain documents and how they change their reasons for refusal. I know it's a lot to read, but it also illustrates how determined you have to be to overcome all of the many stumbling blocks that MKC throw in front of a public request for a public document. To go through formal complaints and submissions to the ICO not only take up a lot of time but they are an unnecessary expense for a cash-strapped council like MKC. If MKC had followed the ICO guidelines that the ICO have defined for Local Public Authorities then none of what follows in the emails would have had happened thereby saving time and money for all concerned.**

If my experience was an isolated issue then it might be explained away as an anomaly or human error on the part of the planning department, but it is clear from the recent tribunals and public inquiries at Blakelands and Willen that others in MK have suffered the same difficulties in getting public documents out of MKC. What is also apparent is that repeated reprimands given to MKC by the ICO have been ignored and the MKC policy of "refuse everything" seems to be the default position. That cannot continue. The Scrutiny Committee should probe this point with the relevant departments and not be fobbed-off with the usual "we'll treat it as a learning issue" excuse because these lessons have demonstrably been ignored repeatedly in recent years. The Scrutiny Committee might also want to learn why the Freedom of Information policy of the planning department differs so greatly from that

of the Deputy Chief Executive, Tracey Aldworth, who kindly supplied one of the documents that continued to be refused by the planning department.

Another concern that I would like to draw to the attention of the Scrutiny Committee is with regard to the “Level 2 Complaints Procedure” operated by MKC. After having my requests refused on two occasions by the then Freedom of Information Department my complaint about their handling of my request went to an “internal review” who upheld the refusal decisions of the FoI Department. I was curious about who in MKC had done the review, so I asked, and my question was ignored for 5 months despite reminders. When the answer was finally delivered it turned out that it was the FoI Department itself who had done the review and also had upheld their two earlier decisions (so no surprise there then). It is clear that the “internal reviews” and “Level 2 complaints procedure” are just another time wasting, stumbling block thrown at the public to make them give up and go away. This is clearly not a fair system of internal review so perhaps the Scrutiny Committee could probe this point further with Information Governance.

Finally, I think that if Information Governance were to ask members of the public how they wanted to be treated by MKC, with regard to FoI requests, then **I believe a lot of respondents would simply state that they wanted MKC to be honest with the public.** I note that there are two important new documents produced by the Information Governance department which have been included as Appendices J and K in the enclosures for the Scrutiny Committee. These are the new June 2021 internal guidance documents for Freedom of Information and Environmental Information Regulations. What I find concerning about both of these documents is that there isn't a single occurrence, not one, of the word “honest” (or any associated word such as honesty, honestly or dishonest) in either of them. Additionally, if you search for the word “truth” (or any of its associated words) then you won't find them either.

I think that it is an appalling mistake to completely omit the fundamental tenet about openness and honesty in two internal documents that are intended to give guidance to MKC employees with regard to their dealings with the public, but unfortunately it is very much aligned with the way that my FoI request has been dealt with by MKC which took a year, lots of emails and the intervention of the ICO to resolve. Perhaps the Scrutiny Committee could probe further on this issue to assess the financial costs to us all caused by the blatant dishonesty of the Planning Department who misled both the FoI Department and the public throughout this dispute.

Andrew McGrandle

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**From:** Andy McGrandle  
**Sent:** 08 February 2020 11:13  
**To:** Peacock, Lakeisha  
**Cc:** Hosking, David  
**Subject:** [EXT] Freedom of Information Request

## Freedom of Information Request

**RE: Planning Application 18/00643/FUL**

**Conversion and extension of an existing stone barn to a two-bedroom residential property**

**At: Barn set back from West Farm Way, Emberton, Olney, MK46 5QP**

**And**

**Planning Application 19/03142/FUL**

**Proposal: Retrospective permission for the demolition of an existing stone barn, its rebuild, extension and conversion into a two-bedroom residential dwelling.**

**At: Mounts House, West Lane, Emberton, Olney, MK46 5DA**

Lakeisha,

I can appreciate that the document requests that I have made below would be better addressed to Planning Enforcement, but in an email from Tracy Darke on 21<sup>st</sup> January 2020 I was directed to make all requests for information through you, so please accept my apologies for directing this Freedom of Information Request to you. All of the documents I'm requesting are, I assume, in digital form and, hopefully, they can be easily forwarded on to me via email with the absolute minimum of disruption to you and your colleagues.

### Documents requested

The following three documents all relate to the termination of the earlier planning application (18/00643/FUL) and the inception of the later planning application (19/03142/FUL).

**1. A copy of an email dated 23rd August 2019 addressed to Mr. DJ Soul from Gary Dunne in Planning Enforcement under the original planning number 18/00643/FUL.**

With respect to your email to me dated 22<sup>nd</sup> January 2020 in which you informed me that the Enforcement Department no longer had a copy of that email I just wanted to clarify that I was only requesting an electronic copy of the original email and not a paper copy which apparently has been mislaid. Presumably one of your IT people would have no trouble locating this email on the MKC server or even a back-up server if it was not available directly from Planning Enforcement.

**2. A copy of the site visit report which was conducted by Planning Enforcement (to include the date of the site visit and the officer who conducted it).** From the other documents that

are already available the site visit would have been referenced under the earlier planning application (18/00643/FUL) and would have been conducted sometime within the 9 day period between 14<sup>th</sup> August 2019 and 23<sup>rd</sup> August 2019.

**3. A copy of the notification to Mr. DJ Soul that the original application was now void and that he would have to re-apply under a new application.**

## Reason for this request

As I'm sure you are aware the decision on Planning Application 19/03142/FUL has been called in for a review by the Development Control Panel and the meeting is currently scheduled for Thursday 27<sup>th</sup> February 2020. At the moment the only information about the follow up from the site visit by Planning Enforcement and the instructions later given to Mr DJ Soul are contained in a letter from Mr. DJ Soul to Gary Dunne dated 27<sup>th</sup> September 2019. This letter outlines Mr. Soul's interpretation or understanding of the instructions given to him by Planning Enforcement. For the purposes of the Development Control Panel meeting it would be good to know the actual details of Planning Enforcement's decision on this matter rather than having to rely on the applicant's interpretation of it. Surely this would be in the interest of Milton Keynes Council.

Many thanks for your help on this, and I look forward to receiving these three documents via an email from you soon.

Best regards,

Andy McGrandle

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**From:** Ward, Laura **On Behalf Of** Freedom of Information Act

**Sent:** 12 February 2020 09:27

**Subject:** RE: [EXT] Freedom of Information Request

Dear Andy

### **ENVIRONMENTAL INFORMATION REGULATIONS 2004 - INFORMATION REQUEST - INTERNAL REFERENCE 306974**

I acknowledge your request for information. Please send any future FOI requests to [FOIA@milton-keynes.gov.uk](mailto:FOIA@milton-keynes.gov.uk) so we can ensure they are picked up and processed promptly.

Your request is being considered and you will receive the information requested within the statutory timescale of 20 working days, as defined by the Environmental Information Regulations, subject to the information not being subject to any exceptions.

In the event that an exception applies information may not be released. You will be informed if this is the case, including your rights of appeal.

Best Regards  
Freedom of Information Team

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**From:** Andy McGrandle  
**Sent:** 12 February 2020 14:43  
**To:** Freedom of Information Act  
**Subject:** [EXT] RE: [EXT] Freedom of Information Request

Laura,

Many thanks for picking up and dealing with my request. As you'll see in original email below I was following the instructions of Tracy Darke in directing all information requests through Lakeisha Peacock in the planning department, and I had no idea that MK Council had a team specifically looking after freedom of information requests. I was aware of the maximum 20 working day statutory timescale for such requests, but as the documents I've requested are presumably all in digital form I was hoping to minimise the work required in sending them to me (by email) to just a few minutes of MKC time. My other hope is that you might be able to get them to me before the Development Control Panel meeting on 27<sup>th</sup> February 2020, as I explained in my reasons for the FoI request below, otherwise the meeting may have to be postponed which I'm sure would be an inconvenience for the Development Control Panel and other local councillors.

I look forward to hearing from you.

Best regards,

Andy McGrandle

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**From:** Ward, Laura  
**On Behalf Of** Freedom of Information Act  
**Sent:** 26 February 2020 16:57  
**To:** 'Andy McGrandle'  
**Subject:** RE: [EXT] RE: [EXT] Freedom of Information Request

Dear Andy

#### **ENVIRONMENTAL INFORMATION REGULATIONS 2004 - INFORMATION REQUEST - INTERNAL REFERENCE 306974**

Your request for information has now been considered and our response is below:

**1. A copy of an email dated 23rd August 2019 addressed to Mr. DJ Soul from Gary Dunne in Planning Enforcement under the original planning number 18/00643/FUL.**

With respect to your email to me dated 22<sup>nd</sup> January 2020 in which you informed me that the Enforcement Department no longer had a copy of that email I just wanted to clarify that I was only requesting an electronic copy of the original email and not a paper copy which apparently has been mislaid. Presumably one of your IT people would have no trouble

locating this email on the MKC server or even a back-up server if it was not available directly from Planning Enforcement.

Your request has been considered and in accordance with Regulation 14 of the Environmental Information Regulations 2004 this email acts as a partial refusal notice. The information you've requested constitutes the personal data of which you are not the data subject and therefore Regulation 12(3) and 13(1) of the Environmental Information Regulations 2004 are engaged. Although we appreciate that the name and email address of the data subject could be redacted the data subject can still be identified indirectly as your request is specific to correspondence to a certain individual. The Data Protection Act 2018 is therefore engaged as the information indirectly identifies a living individual.

To disclose such information would constitute a breach of the data protection principles, such that they would not consent to the release of such information and there is a reasonable expectation of privacy in the communications. The harm of disclosure of the individual's personal information would also outweigh the public interest in disclosure. I also understand that Mr Gary Dunne, Senior Enforcement Officer, has provided to you a full update on the enforcement case on 20 September 2019, which reflects the current position.

**2. A copy of the site visit report which was conducted by Planning Enforcement (to include the date of the site visit and the officer who conducted it).** From the other documents that are already available the site visit would have been referenced under the earlier planning application (18/00643/FUL) and would have been conducted sometime within the 9 day period between 14<sup>th</sup> August 2019 and 23<sup>rd</sup> August 2019.

Data not held. A site visit was undertaken however no site notes were required or taken. I also understand that Mr Gary Dunne, Senior Enforcement Officer, has provided to you a full update on the enforcement case on 20 September 2019, which reflects the current position.

**3. A copy of the notification to Mr. DJ Soul that the original application was now void and that he would have to re-apply under a new application.**

Data not held. No written notification was given and there is no record held of any telephone calls made.

If you have a complaint about the handling of your request then please contact me within the next 40 working days and I'll arrange for an internal review which will be considered as part of Stage 2 of the Council's complaints procedure.

You also have a right of appeal to the Information Commissioner at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Tel: 0303 123 1113  
[www.ico.org.uk](http://www.ico.org.uk)

Best Regards Laura Ward Freedom of Information Team

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**From:** Andy McGrandle  
**Sent:** 28 February 2020 12:38  
**To:** Freedom of Information Act  
**Cc:** Hosking, David  
**Subject:** [EXT] Freedom of Information Request response

Dear Laura,

As you can imagine the response I received regarding my freedom of information request was somewhat disappointing. I'm sorry to have to trouble you again on this matter, and I appreciate that you are simply the messenger of this information, but hopefully you can direct my comments and requests to the department that should be able to answer them. I have highlighted in red the additional questions I have following your response.

**1. A copy of an email dated 23rd August 2019 addressed to Mr. DJ Soul from Gary Dunne in Planning Enforcement under the original planning number 18/00643/FUL.**

My earlier attempt to get a copy of this enforcement officer's decision notice from the planning department resulted in a response which said "we no longer hold a copy of that document". As the original document was in the form of an email I could not understand how such an important document had gone missing unless it had been deleted. As I'm sure that you are aware the destruction of documents by a local public authority (LPA) to prevent them from being seen is the only case in which the ICO can impose a fine on an LPA. This is what prompted my FoI request to you, and happily now it appears that the document has been found. Unfortunately, I am now prevented from seeing this document as a result of the Data Protection Act. The 20<sup>th</sup> September document mentioned at the end of your reply has no relevance to my request, it does not refer to the document that I requested and later correspondence showed that the comments made in the 20<sup>th</sup> September email were completely false.

On the 18/00643/FUL planning application website the planning department have published the reply (from Mr. DJ Soul to Gary Dunne) to the document I requested and looking through that reply it occurs to me that the published reply document would fulfil all of the Data Protection Act criteria listed below. This suggests a double standard being applied by the planning department. If the reasons given below for denying me a copy of this document are correct then this suggests that the planning department have breached the same data protection rules by publishing Mr. Soul's detailed reply. **Could you let me know, in the light of this additional information does the refusal of the document that I requested still stand?**

**2. A copy of the site visit report which was conducted by Planning Enforcement (to include the date of the site visit and the officer who conducted it).**

The response that "A site visit was undertaken however no site notes were required or taken" was genuinely surprising as this was a serious breach of planning regulations. This type of site visit was criticised in the September 2019 Ombudsman's report into this application. The ombudsman's concerns and findings were:

**"Without clear records I am not able to confirm whether a site visit took place. The Council should be able to clearly evidence to Mrs X and to the Ombudsman whether or not it carried out a site visit and, if it did, as a minimum a brief summary of what the officer saw, or photographs. I consider the lack of such records is fault".**



The report also included an instruction to MK Council to “**review the recording of site visits to ensure, where they take place, adequate records are kept to show what was seen and considered and, where one does not take place, this is recorded with a short explanation of why**”

The 20th September document mentioned at the end of your reply has no relevance to my request, it does not refer to the document that I requested and later correspondence showed that the comments made in the 20th September email were completely false. My original request was for a copy of the site visit report and information about when the site visit occurred and who conducted it. You have confirmed that a site visit took place, but with no notes or photographs that might prove that the visit took place, and you omitted to provide the remaining information I requested. **As you have confirmed that a site visit took place could you please supply the other information that I requested – who did it and on what date?**

### **3. A copy of the notification to Mr. DJ Soul that the original application was now void and that he would have to re-apply under a new application.**

The response “*Data not held. No written notification was given and there is no record held of any telephone calls made*” didn’t make sense to anyone when it was read out at the Development Control Panel Meeting last night. In her verbal statement at the DCP meeting the applicant stated that she had issued the new application following instruction from the planning department. This conflicts with the response that you have sent to me. In the light of this information resulting from last night’s DCP meeting **could you please ask the planning department again for a copy of the notice (email/letter) which was sent to the applicant which prompted the new application 19/03142/FUL?**

## **Freedom of Information Request for an additional document**

Laura, under the same planning application I learned last night from the planning department report submitted to the DCP that a stop notice had been issued some time after 14<sup>th</sup> August 2019. **I would like to request a copy of that Stop Order to include who issued it and on what date.**

Many thanks for your help on this,

**Andy McGrandle**

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**From:** Ward, Laura **On Behalf Of** Freedom of Information Act

**Sent:** 05 March 2020 10:29

**Subject:** RE: [EXT] Freedom of Information Request response

Dear Andy

Further to your below email I have reviewed the points you’ve raised and also the documentation you’ve referred to. I outline below my findings / MKC’s response.

#### Point 1

The documents uploaded onto the planning portal were uploaded in error and have now been handled internally as a data breach. They have now been removed from the public site. Our original response regarding this email stands.

### Point 2

A site visit was undertaken by a Senior Enforcement Officer during the week commencing 19/08/2019. However, the visit was not a requirement as the officers had already received photographs showing the site which were sufficient for the officers to make an assessment of any potential breach.

### Point 3

Planning enforcement officers routinely invite planning application verbally and applicants can submit a new planning application in their own right without an invitation. There is no requirement for any invitation to be in writing. I have requested that the planning enforcement team check again and they have confirmed to me that no further correspondence is held on file after September 2019. They have also advised that it would not have been a formal notification but a suggestion only based on their opinion.

### Point 4

No stop notice has been issued to the applicant. The applicant had informally indicated they would stop works.

Best Regards

Laura Ward

Corporate Information Officer

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**From:** Andy McGrandle

**Sent:** 23 April 2020 15:23

**To:** Freedom of Information Act

**Cc:** Ward, Laura **Subject:** [EXT] RE: [EXT] Freedom of Information Request response

Dear Laura,

I had intended to respond earlier to your response dated 5<sup>th</sup> March 2020, but after spending some time doing a bit more research we were suddenly all caught up in the Covid 19 crisis. It would have been insensitive and churlish to have added to the Council's workload with a 'complaint' at a time when I would presume that MK Council has far more important things to deal with, so I delayed my response until I read the Planning Department's Covid 19 plan. It seems that they are continuing to deal with applications through the current crisis and so I thought that this might be a better time to get this complaint into the MK Council system and let you determine its priority, as you see fit, in the context of the current crisis.

As you can imagine, the response I received from you on 5<sup>th</sup> March regarding my freedom of information request was even more disappointing than your response to my earlier request. I'm sorry to have to trouble you again on this matter, and I appreciate that you are simply the messenger of this information, but **I would like to escalate my request to what you described earlier as a Stage 2 Complaint to MK Council regarding their responses to my FoI request.** I understand that I have to follow your internal complaints procedure before I can make a complaint to the ICO.

The format of the text below includes:

1. My original request (in **black**)
2. A summary of events up to the 5<sup>th</sup> March (in blue)
3. 5<sup>th</sup> March 2020 Response from MK Council (in **green**)

4. My response which forms the basis of the stage 2 Complaint (in red)

**1. A copy of an email dated 23rd August 2019 addressed to Mr. DJ Soul from Gary Dunne in Planning Enforcement under the original planning number 18/00643/FUL.**

My earlier attempt to get a copy of this enforcement officer's decision notice from the planning department resulted in a response which said "we no longer hold a copy of that document". As the original document was in the form of an email I could not understand how such an important document had gone missing unless it had been deleted. As I'm sure that you are aware the destruction of documents by a local public authority (LPA) to prevent them from being seen is the only case in which the ICO can impose a fine on an LPA. This is what prompted my FoI request to you, and happily now it appears that the document has been found. Unfortunately, I am now prevented from seeing this document as a result of the Data Protection Act. The 20<sup>th</sup> September document mentioned at the end of your reply has no relevance to my request, it does not refer to the document that I requested and later correspondence showed that the comments made in the 20<sup>th</sup> September email were completely false.

On the 18/00643/FUL planning application website the planning department have published the reply (from Mr. DJ Soul to Gary Dunne) to the document I requested and looking through that reply it occurs to me that the published reply document would fulfil all of the Data Protection Act criteria listed below. This suggests a double standard being applied by the planning department. If the reasons given below for denying me a copy of this document are correct then this suggests that the planning department have breached the same data protection rules by publishing Mr. Soul's detailed reply. **Could you let me know , in the light of this additional information does the refusal of the document that I requested still stand?**

**5<sup>th</sup> March response from MK Council**

1. **"The documents uploaded onto the planning portal were uploaded in error and have now been handled internally as a data breach. They have now been removed from the public site. Our original response regarding this email stands"**

**First of all I was informed that this document had gone missing and that I couldn't therefore have a copy, then it was later 'found' and declared to be a breach of the Data Protection Act so that it could not be supplied to me. The supposed confidentiality of the requested email was linked, as mentioned above, to the publication of two letters on the planning website from the applicant to Gary Dunne in Planning Enforcement, and the planning department's solution has been to subsequently remove both of these letters from the website. My complaint about the handling of this email request is twofold:**

1. **I dispute that there is any Data Protection Act issue with either of the letters from the applicant as they form part of his application and they are listed as such in section 8 of the application document along with the plans and other usual documents associated with an application. I contend that they should be reinstated on the planning website as the applicant has already defined them as public documents.**
2. **I am withdrawing my request for a copy of the 23<sup>rd</sup> August 2019 email from Gary Dunne to the applicant, not because I might despair of ever getting a copy from the Enforcement Department, but because the Deputy Chief Executive of MK Council, Tracey Aldworth, has kindly supplied (through my Ward Councillor, David Hosking ) a copy of the requested email and she has confirmed that there is nothing confidential in the email and also that there is an expectation that correspondence from the enforcement team is usually placed in the public domain.**

**Tracey Aldworth had apparently no problem in securing a copy of this email and her viewpoint on what constitutes a public document is reassuringly refreshing. This begs the question as to why the views of the Planning and Enforcement Departments regarding this document are so wildly at odds with the view of the Deputy Chief Executive of the Council.**

**2. A copy of the site visit report which was conducted by Planning Enforcement (to include the date of the site visit and the officer who conducted it).**

The response that “A site visit was undertaken however no site notes were required or taken” was genuinely surprising as this was a serious breach of planning regulations. This type of site visit was criticised in the September 2019 Ombudsman’s report into this application. The ombudsman’s concerns and findings were:

**“Without clear records I am not able to confirm whether a site visit took place. The Council should be able to clearly evidence to Mrs X and to the Ombudsman whether or not it carried out a site visit and, if it did, as a minimum a brief summary of what the officer saw, or photographs. I consider the lack of such records is fault”.**

The report also included an instruction to MK Council to **“review the recording of site visits to ensure, where they take place, adequate records are kept to show what was seen and considered and, where one does not take place, this is recorded with a short explanation of why”**

The 20th September document mentioned at the end of your reply has no relevance to my request, it does not refer to the document that I requested and later correspondence showed that the comments made in the 20th September email were completely false. My original request was for a copy of the site visit report and information about when the site visit occurred and who conducted it. You have confirmed that a site visit took place, but with no notes or photographs that might prove that the visit took place, and you omitted to provide the remaining information I requested. **As you have confirmed that a site visit took place could you please supply the other information that I requested – who did it and on what date?**

**5<sup>th</sup> March response from MK Council**

**2. A site visit was undertaken by a Senior Enforcement Officer during the week commencing 19/08/2019. However, the visit was not a requirement as the officers had already received photographs showing the site which were sufficient for the officers to make an assessment of any potential breach.**

**From this rather vague response I gather that the Enforcement Department still can’t tell me who conducted the site visit and exactly when, clearly the Ombudsman’s concerns about the lack of reports and record keeping after site visits are well founded. The second sentence is of more concern to me as it implies that in the case, like this one, where Enforcement were alerted to a serious breach of planning – defined in an Act of Parliament as a criminal offence – a site visit would not be required as long as the officer had some photos on which to base his decision. It is beyond belief that in such a situation a site visit would not be mandatory and certainly an investigation report would be written. At the moment there is no written evidence that either a site visit or investigation ever took place.**

**The Government’s Planning Practice Guidance on Enforcement and post-permission matters (<https://www.gov.uk/guidance/ensuring-effective-enforcement>) states in paragraph 014, “Effective enforcement action relies on accurate information about an alleged breach of planning**

**control” and “It is important to keep documentary evidence of any investigation.” Clearly MKC’s enforcement department has failed to follow the Government’s own enforcement guidelines.**

**The lack of any records on this breach of planning is a direct contravention of MKC’s Enforcement Plan in section 5.2 which states that “All decisions and use of investigatory powers will be recorded”. MKC are supposed to produce a score for each enforcement complaint when a breach is confirmed as per the table in Appendix 1 of the Enforcement Plan, but again this does not appear to have been done. Appendix 2 in the same document helps to define the priority of the enforcement action and it is interesting to note that “unauthorised demolition within a conservation area” warrants the *highest priority*. MKC needs to explain why the planning and enforcement officers failed to record (or supply) any documentary evidence in the case of this ‘high priority’ breach of planning.**

**3. A copy of the notification to Mr. DJ Soul that the original application was now void and that he would have to re-apply under a new application.**

The response “Data not held. No written notification was given and there is no record held of any telephone calls made” didn’t make sense to anyone when it was read out at the Development Control Panel Meeting last night. In her verbal statement at the DCP meeting the applicant stated that she had issued the new application following instruction from the planning department. This conflicts with the response that you have sent to me. In the light of this information resulting from last night’s DCP meeting **could you please ask the planning department again for a copy of the notice (email/letter) which was sent to the applicant which prompted the new application 19/03142/FUL?**

**5<sup>th</sup> March response from MK Council**

**3. Planning enforcement officers routinely invite planning application verbally and applicants can submit a new planning application in their own right without an invitation. There is no requirement for any invitation to be in writing. I have requested that the planning enforcement team check again and they have confirmed to me that no further correspondence is held on file after September 2019. They have also advised that it would not have been a formal notification but a suggestion only based on their opinion.**

**As I pointed out in my previous response on this issue the Planning Department’s explanation is at odds with that given by the applicant at the DCP meeting. As MKC stated earlier there were no telephone calls or correspondence and the applicant simply decided himself to spend money and issue a new application. This really does begger belief and is an extremely poor explanation of why the new application was instigated. MKC needs to explain why there is no documentary evidence for how the new application came to be submitted and why the old application was put on hold.**

## **Freedom of Information Request for an additional document**

Laura, under the same planning application I learned from the DCP meeting on 27<sup>th</sup> February 2020 that a stop notice had been issued some time after 14<sup>th</sup> August 2019.

**I would like to request a copy of that Stop Order to include who issued it and on what date.**

**5<sup>th</sup> March response from MK Council**

**4. No stop notice has been issued to the applicant. The applicant had informally indicated they would stop works.**

This response from MKC enforcement is completely at odds with the statement made by the planning officer at the DCP meeting on 27<sup>th</sup> February 2020 that a stop notice had been issued. It is my understanding that a stop notice can only be served in conjunction with an enforcement notice and all of this should have been documented . MKC are required by law to maintain a public register on their website of all enforcement notices, stop/temporary stop notices and planning contravention notices, and I did look for this before raising this particular FOI request, but MKC apparently do not have this on their website, but if it is there somewhere then I would appreciate a link to it. The obvious question that arises from this contradiction between planning and enforcement is “who is being misled – me or the DCP?”

Many thanks for your help on this,  
Andy McGrandle

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**From:** Finlow, David **On Behalf Of** Freedom of Information Act  
**Sent:** 21 May 2020 14:16  
**To:** Andy McGrandle  
**Subject:** Re: 306974 - Environmental Information Regulations 2004 - Internal Review

Dear Mr McGrandle

**Re: 306974 – Information request under the Environmental Information Regulations 2004 – Internal Review**

I'm writing with regard to your request for an Internal Review of the EIR request you made on 8 February 2020. This concerned:

- 'A copy of an email dated 23rd August 2019 addressed to Mr. DJ Soul from Gary Dunne in Planning Enforcement under the original planning number 18/00643/FUL';
- 'A copy of the site visit report which was conducted by Planning Enforcement (to include the date of the site visit and the officer who conducted it)';
- 'A copy of the notification to Mr. DJ Soul that the original application was now void and that he would have to re-apply under a new application', and
- 'A copy of that Stop Order to include who issued it and on what date'.

I understand you were dissatisfied with the initial response to your request as we were unable to provide some of the information you had requested.

An internal review looks at the original request and response and checks that the correct legislation was applied and any exemptions applied to information were done so lawfully. It also reviews the information that was provided and asks if there is any more information related to the request that can be disclosed.

In this case I'm satisfied that all information that can be lawfully disclosed has been and that the legislation and exemptions have been applied lawfully. I acknowledge that mistakes were made with regards to the original publication of information that was classed as confidential and should not have been put in the public domain. As this constituted a data breach, it's a separate issue and has been accordingly logged and investigated under GDPR.

I've therefore decided not to uphold your complaint.

As this concludes the council's complaints procedure, if you're dissatisfied with this decision you may request the Information Commissioner's Office to investigate. You can contact the ICO at:

Information Commissioner's Office, Wycliffe House  
Water Lane, Wilmslow SK9 5AF  
Tel: 0303 123 1113  
[www.ico.org.uk](http://www.ico.org.uk)

Yours sincerely  
Lisa Beckett  
Head of Performance and Information  
Milton Keynes Council | Civic, 1 Saxon Gate East | Milton Keynes | MK9 3EJ  
[www.milton-keynes.gov.uk](http://www.milton-keynes.gov.uk)

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**From:** Andy McGrandle  
**Sent:** 22 May 2020 13:54  
**To:** 'Freedom of Information Act'  
**Subject:** RE: 306974 - Environmental Information Regulations 2004 - Internal Review

Dear Lisa,

Thank you for responding to my complaint, but I must confess to an equal amount of disappointment as I had when I first received the response from the planning department to my request for the 4 documents. I believe that your response falls woefully short of the May 2018 GDPR Guidelines produced by the Planning Advisory Service and, more importantly, the guidance to LPAs issued by the ICO. I also noticed that you did not address the issue that one of the documents that I had requested (number 1 in my list) was refused twice by the planning department (once because they said they had lost it and secondly under GDPR rules) and yet your Deputy Chief Executive, Tracey Aldworth, was happy to supply the document I requested and saw no reason to withhold it under GDPR. I think that your Deputy Chief Executive has a far more correct and enlightened view on GDPR than your planning department, but I shall trouble you no longer on these issues as I can now put a formal complaint to the ICO about how my request has been handled by MK Council.

One piece of information that I would appreciate is which department conducted the 'internal review' mentioned in your response – was it your department or planning – and who conducted it?

Best regards,

Andy McGrandle

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# 10

**From:** Andy McGrandle  
**Sent:** 18 October 2020 17:16  
**To:** 'David.Finlow [Laura Ward](#)  
**Subject:** Additional Freedom of Information Request

Dear Lisa,

1. I realise that it's some months ago since I was last in contact with your office (see email string below), but as yet I haven't heard back from you regarding the question at the end of my last email to you (immediately below). I asked what department had conducted the 'internal review' that you mentioned in your email of 21<sup>st</sup> May 2020 and who had conducted it. I was hoping that the review hadn't been conducted by the planning department as that would have been like asking a school pupil to mark his own homework – i.e. likely to get a biased response, but I was hoping that you could confirm both the department that did the review and the name of the person who did it. As part of this additional Freedom of Information request could you please let me know the answer to my earlier question.

This next question is really for Lara Ward, but it forms part of the same overall Fol request.

Dear Laura,

2. During a DCC meeting on 8<sup>th</sup> October 2020 a report by Myles Joyce was presented to the committee in response to their request back in April for a review of the entire planning history with regard to the development at Emberton (Planning Applications 18/00643/FUL and 19/03142/FUL). Mr. Joyce's report contained references to two items that were of interest to me. Firstly he describes in the section covering the Enforcement Investigation that "***The enforcement officer wrote to the applicant on 15th November 2019, advising him to submit a planning application. The enforcement case was opened 19/00319/UNAWKH on 18th November 2019.***" If you look back at my original Fol request you'll see that the third document on my list was for 'A copy of the notification to Mr. DJ Soul that the original application was now void and that he would have to re-apply under a new application' and at the time I didn't know on what date this notification had been sent. The answer I received from you regarding my original request was "Data not held. No written notification was given and there is no record held of any telephone calls made". As I noted at the time



that this didn't make sense and conflicted with the report given by the planning department to the DCP so when I asked for confirmation I received from you the following response.

*"Planning enforcement officers routinely invite planning application verbally and applicants can submit a new planning application in their own right without an invitation. There is no requirement for any invitation to be in writing. I have requested that the planning enforcement team check again and they have confirmed to me that no further correspondence is held on file after September 2019. They have also advised that it would not have been a formal notification but a suggestion only based on their opinion".*

Now that we have a date for the letter that I had requested earlier, and I apologise for not knowing this earlier but the responses from MKC indicated that there wasn't any communication with the applicant on this matter, **I would now like to make a request for a copy of the letter dated 15<sup>th</sup> November 2019 from the Enforcement Officer to the applicant advising him to submit a planning application.**

- 3. I would also like to request copies of any documents or images contained in enforcement case file 19/00319/UNAWKH.** I don't think that this will be an onerous task for the planning department because you have already informed me that as part of his investigation the enforcement officer made a site visit (although you can't tell me who did it and on what date) but that he did not make any notes, hence this may be a very small file to copy.

Many thanks for your help on this, and I look forward to your reply in due course.

Andy McGrandle

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**11**

**From:** Andy McGrandle **Sent:** 23 October 2020 09:19  
**To:** Finlow, David ; Ward, Laura >; Freedom of Information Act **Cc:** David Hosking  
**Subject:** [EXT] FW: Additional Freedom of Information Request

Dear David (and Lisa) and Laura,

I sent the following email to you on Sunday 18<sup>th</sup> October, and I've heard nothing from you since. I assure you I'm not nagging, but the last time I made a Freedom of Information request you very quickly responded with an acknowledgement that you had received it and would respond within 20 days. I just wanted to make sure that you had received the following email and if you could confirm that then I would much appreciate it.

Apologies for the slight confusion on my part between David and Lisa but the last response from you was signed off by Lisa Beckett, but it came from David Finlow's email account, so hopefully this will make it through to Lisa for her response.

Best regards,

Andy McGrandle

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**12**

**From:** Okonjo, Yvonne  
**On Behalf Of** Freedom of Information Act  
**Sent:** 23 October 2020 11:39  
**To:** Andy McGrandle  
**Cc:** Freedom of Information Act  
**Subject:** RE: [EXT] FW: Additional Freedom of Information Request

Good Day,

We apologise you had not received our acknowledgement.

Please accept this as our acknowledgement of your request and we will aim to respond within 20 working days.

We ask that you kindly consider being patient with us as all our service areas have been impacted by the ongoing health crisis. If a delay in response should be applicable to your case, we will be in touch with you to inform of this.

In response to Question 1: We can confirm that it was the FOI Team and the Head of Information Governance and Performance (Lisa Beckett) that performed the internal review of your case.

Your remaining requests will be considered and we will be in touch as soon as we have an update.

Thank you for your time.

Kind Regards,

**FOI Team**

**Information Governance**

**Milton Keynes Council**

Civic Centre, 1 Saxon Gate East  
Central Milton Keynes MK9 3EJ

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**13**

**From:** Andy McGrandle

**Sent:** 23 October 2020 13:34

**To:** Freedom of Information Act

**Cc:** Hosking, David

**Subject:** [EXT] RE: [EXT] FW: Additional Freedom of Information Request

Yvonne,

Many thanks for the acknowledgement and for the answer to my first question, and I look forward to your reply regarding the documents I requested by 13<sup>th</sup> November 2020.

Best regards,

Andy McGrandle

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**14**

**From:** Okonjo, Yvonne **On Behalf Of** Freedom of Information Act

**Sent:** 30 October 2020 09:28

**To:** Andy McGrandle

**Cc:** Freedom of Information Act

**Subject:** RE: Additional Freedom of Information Request

Good Morning Mr McGrandle,

I hope this email finds you well.

Following your further request for information, I am sorry to inform you that the enforcement officer and planning officers have confirmed to not have any further documentation to provide.

I understand that your case has been through the internal review process. Hence this case cannot be reviewed any further and will now need to go through the ICO should you wish to pursue any further.

Here are their details:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Tel: 0303 123 1113  
[www.ico.org.uk](http://www.ico.org.uk)

Kind Regards,  
**Yvonne**  
**Corporate Information Officer**  
**Information Governance**  
**Milton Keynes Council**  
Civic Centre, 1 Saxon Gate East  
Central Milton Keynes MK9 3EJ

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**15** **From:** Andy McGrandle  
**Sent:** 31 October 2020 13:09  
**To:** 'Freedom of Information Act'  
**Subject:** RE: Additional Freedom of Information Request

Dear Yvonne,

Many thanks for your quick reply to my additional freedom of information request. Yes, your email found me well and I hope that you, Lisa Beckett and Laura Ward are also well and coping with life in these unusual Covid times. Apologies for my slightly tardy response, but it has been a very busy week for me and sometimes weekends are the only time to catch up on emails.

I don't know if you would agree with me on this, but the response that you conveyed from the planning department – **“the enforcement officer and planning officers have confirmed to not have any further documentation to provide”** could be read in two different ways. I just want to make sure that I'm reading it in the way that it was intended, so please forgive me for asking you yet another question in order to clarify the planning department's response.

When the planning department confirms to *“not having any further documentation to provide”* do they mean:

1. the documents I requested **do not exist?**
- or

2. the documents I requested **do exist**, but they are refusing to provide them to me under the FoI request?

I would also like to clarify that yes, my original FoI requests did go to an internal review process conducted by Lisa Beckett and the results of that review were sent to me in an email from Lisa on 21<sup>st</sup> May 2020. The report that I mentioned in item 2 of my email of 18<sup>th</sup> October 2020 was started in September 2020 and presented to the DCC on 8<sup>th</sup> October 2020 some **4 months after** your internal review. The report revealed some new information that apparently contradicted the responses given by the planning department to my earlier FoI request – hence my **additional** FoI request on 18<sup>th</sup> October 2020. In your comment about having been through an internal review process “this case cannot be reviewed any further” does that include situations like this when additional information later comes to light or is my only recourse now, as you state in your email, to contact the ICO? I’d appreciate your view on this.

Best regards,

Andy McGrandle

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16

**From:** Andy McGrandle  
**Sent:** 13 November 2020 14:08  
**To:** Freedom of Information Act  
**Subject:** [EXT] FW: Additional Freedom of Information Request

Dear Yvonne,

I was hoping that my additional questions posed in my email of 31<sup>st</sup> October would be very easy to answer – with a simple Option 1 or Option 2 response. Could you please let me know if you, or the planning department, will be answering these questions soon as it is now almost two weeks since I asked them.

Best regards,

Andy McGrandle

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**17** **From:** Yvonne Okonjo **On Behalf Of** Freedom of Information Act  
**Sent:** 13 November 2020 16:52  
**To:** Andy McGrandle  
**Cc:** Freedom of Information Act  
**Subject:** RE: [EXT] FW: Additional Freedom of Information Request

Good Day Mr McGrandle,

Thank you for your further email.

Please accept my apologies for the delay in responding to your further query. As I am sure you can appreciate the current health crisis has had an impact on all our service areas.

I have double checked (on about 3 occasions now) with our planning enforcement team (as they would be the most applicable to your case) and they have confirmed that there is no further information to disclose on this matter. They have re-confirmed that all documents relevant to your FOI request have already been disclosed hence there is nothing further to disclose.

Thank you for your time.

Kind Regards,  
**Yvonne**  
**Corporate Information Officer**  
**Information Governance**  
**Milton Keynes Council**  
Civic Centre, 1 Saxon Gate East  
Central Milton Keynes MK9 3EJ

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**18** **From:** Andy McGrandle  
**Sent:** 13 November 2020 17:35  
**To:** 'Freedom of Information Act'  
**Subject:** RE: [EXT] FW: Additional Freedom of Information Request

Dear Yvonne,

Thanks for your quick reply to my reminder email earlier today. I'm afraid that your answer has confused me even more. Firstly, the response from the planning department that ***"there is no further information to disclose on this matter"*** is almost the same as their earlier response to which I had requested clarification. This response doesn't clarify anything. In addition they now state that ***"they have re-confirmed that all documents relevant to your FOI request have already been disclosed hence there is nothing further to disclose"*** which is very confusing as the planning department hasn't disclosed ***any*** of the documents that I requested.

I really don't want to waste your time, or my time, on endless emails back and forth, but I would like to make one last attempt to fully understand the meaning of the enforcement officer's repeated response. All that I would like to know is in the light of the recent report presented by Myles Joyce to the DCC on 8<sup>th</sup> October 2020, some 4 months *after* your internal review had concluded, which describes a document I had been told earlier that didn't exist. Clearly, the document either exists or it doesn't and from the report presented to the DCC it apparently does exist which is why I sought the simple answer to my question in my email to you on 31<sup>st</sup> October 2020.

So for one last try, please ask the enforcement officer that when he confirms to "not having any further documentation to provide" does he mean:

**Option 1.** the document I requested *does not exist*?

or

**Option 2** the document I requested *does exist*, but they are refusing to provide it to me under the FoI request?

I'm not expecting any long discourse on the subject, I simply want to know an answer to my question above, and the only two possible responses are "Option 1" or "Option 2" which should be a quick and easy response for the enforcement officer.

Thank you for your efforts on this matter, and I look forward to your response early next week.

Best regards,

Andy McGrandle

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19

**From:** Andy McGrandle

**Sent:** 16 November 2020 10:19

**To:** 'Freedom of Information Act'

**Subject:** RE: [EXT] FW: Additional Freedom of Information Request

Yvonne,

In one of your earlier emails you were kind enough to provide the name of the person in your department who did the internal review at MKC and I completely forgot to ask you the name of the enforcement officer who has

provided the repeated response in our recent emails. If you could add that name to your response to the question I asked in my email of 13<sup>th</sup> November 2020 (see below) then I would much appreciate it.

Best regards,

Andy McGrandle

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