

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 2 October 2006

Public Authority: Port of London Authority
Address: Bakers' Hall
7 Harp Lane
London
EC3R 6LB

Summary

The complainant made a request under the Environmental Information Regulations 2004 to the Port of London Authority (the "PLA") for information regarding the reconstruction and development works carried out to Temple Pier between 1 January 1988 and 1 January 1991. The PLA stated that it was not subject to the EIR but supplied some information to the complainant. The complainant was not satisfied with the information supplied because the PLA did not supply key information in the form of licenses. This Decision Notice requires the PLA to either provide the complainant with the information requested or issue a refusal notice, specifying which exception(s) it believes to be applicable.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

The Request

2. On 18 July 2005 the complainant wrote to the PLA requesting the following information under the EIR:

"...copies of all Licences, Agreements, Constructional Drawings and correspondence be made available to me, whether written, electronic or in any other material form, regarding the reconstruction and development works carried

out to Temple Pier, Victoria Embankment, WC2P 2PN between 1st January 1988 and 1st January 1991.”

3. The PLA responded to the request on the 2 August 2005 stating that it is not covered by the EIR and that the complainant's request went beyond environmental information but that it would search for any environmental information that it holds.

The Investigation

Scope of the case

4. On 8 August 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - The public authority's assertion that it is not covered by the EIR
 - Whether the request was for environmental information
5. After initial, informal, intervention by the Commissioner the public authority provided some information to the complainant. However, the public authority still maintains that it is not covered by the EIR. In respect of the River Works Licence granted to the Temple Pier Company in 1989, it failed to either make it available to the complainant or issue a refusal stating the exemptions relied on.
6. The complainant also raised other issues in relation to why the public authority was not covered by the Freedom of Information Act 2000. As a matter of fact the PLA is not a public authority for the purposes of the Act because it is neither listed by name nor falls within a category of public authority listed in Schedule 1. Nor has it been designated as a public authority by Order under s.4 or s.5 of the Act. However, the Commissioner has drawn the complainant's concerns to the Department for Constitutional Affairs which has policy responsibility for FOI legislation. The matter of the application of the Act to the PLA is not further addressed in this Notice.

Chronology

7. The complaint was received by the Commissioner on the 9 August 2005 and was allocated to a caseworker on 5 June 2006 after the Commissioner made the decision that the public authority was covered under Regulation 2(2)(c) of the EIR.
8. A member of the Commissioner's staff wrote to the public authority informing it of his decision that the public authority was covered under Regulation 2(2)(c) of the EIR and requesting that the public authority give its reasons for concluding that the request went beyond environmental information as defined in Regulation 2(1).
9. The Commissioner also wrote to the complainant to outline the scope of his investigation.

10. The public authority responded on 29 June 2006 stating that it still believed that it was not covered by the regulation 2(2)(c) of the EIR but it would nevertheless respond to the complainant's request.
11. After receiving confirmation from the complainant that some information had been supplied but other information had not, specifically a copy of the River Works License granted to the Temple Pier Company in 1989, the Commissioner wrote to the public authority requesting that it either supply the Licence or issue a refusal in accordance with Regulation 14.
12. As no response was received after twenty working days, the Commissioner wrote again to the public authority restating his request for the public authority to supply the information or issue a refusal notice. Again no response has been received.

Findings of fact

13. The PLA maintains that it is not covered by the EIR despite the Commissioner's advice that it is covered by Regulation 2(2)(c).
14. The PLA has failed to supply the River Works License granted to the Temple Pier Company in 1989 to the complainant or issue a refusal notice under Regulation 14.

Analysis

Procedural matters

15. The Commissioner first considered whether the public authority was a public authority for the purposes of the EIR.
16. Regulation 2(2)(c) states that:
"Subject to paragraph (3), "public authority" means –
Any other body or other person, that carries out functions of public administration".
17. The Commissioner has looked at the duties placed upon the public authority by the Port of London Act 1968 which created the Port of London Authority and finds that section 5 of this legislation places a duty on the authority to carry out functions of public administration. Therefore the public authority is subject to the EIR.
18. Having concluded that the public authority is subject to the EIR, the Commissioner went on to consider whether the request was for environmental information as defined by Regulation 2(1).
18. Regulation 2(1) states that:

“...”environmental information” has the same meaning as Article 2(1) of the Directive, namely any information in written, visual, aural electric or any other material form on –

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;”
19. The complainant requests “all licences, agreements, constructional drawings...” This information appears to constitute a measure as defined by Regulation 2(1)(c).
20. The requested information relates to “reconstruction and development” which includes factors such as energy, noise and waste as detailed in Regulation 2(1)(b). These factors will affect the state of the elements as detailed in Regulation 2(1)(a)
21. Therefore, the Commissioner believes that the request is for environmental information. However, as the public authority has failed to provide the Commissioner with copies of the information or an explanation of why the requested information would not constitute environmental information, as defined in the Regulations, it is difficult to be definitive on this issue.

The Decision

21. The Commissioner’s decision is that the PLA is a public authority and that it did not deal with the request for information in accordance with the Regulations.

Steps Required

22. The Commissioner requires the public authority to take the following step to ensure compliance with the Act:
- Provide the complainant with the information requested or a refusal in accordance with Regulation 14.
23. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

24. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
- The time taken to respond to the complainant's initial request

Failure to comply

25. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

26. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 2nd day of October 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**