

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

Decision Notice

Date: 4 October 2011

Public Authority: Milton Keynes Council
Address: Civic Offices
1 Saxon Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant has requested information relating to ownership of title to land and mineral rights in the Ouse Valley. His request is also concerned with the extraction of aggregates from that land. Milton Keynes Council ("MKC") had provided a response to all but two of the items in the request. During the Commissioner's investigation MKC provided the complainant with a response to the remaining two items.
2. The Commissioner's decision is that the MKC did not meet the requirements of regulation 5 of the EIR. This is because it did not provide a response to two of the items described in the complainant's request within twenty working days.
3. As a response has now been provided to the complainant, the Commissioner does not require the public authority to take any steps.

Request and response

4. On 2 December 2010 the complainant wrote to MKC with an information request. At points 4 and 5 of this request he sought information of the following description:

- " 4. *Clarification of the ownership of title to the land and the mineral rights – if the two are in different ownerships. I am aware of the information that your Council has provided stating that the mineral rights are owned by the Milton Keynes Park Trust. However I remain confused. My understanding is that title to the land and the mineral rights were in the ownership of Milton Keynes Development Corporation (MKDC). When the Corporation was abolished title of the land was passed to the predecessor of your Council – Milton Keynes Borough Council (MKBC), did they [sic] conveyance also include the mineral rights? The Council then entered into a long lease with the Milton Keynes Parks Trust (MKPT) (a registered charity) to manage the parks formerly owned by the Corporation for the benefit and enjoyment of the public. My understanding is that the agreement was a lease and not the conveyance of title, is this correct? If so, your Council is the landowner. If the information you have given to the ICO (which it gave to me) is correct your Council gave the mineral rights and their exploitation to the Trust as part of the lease – is this correct?*
5. *Will you let me know whether the agreement (I assume a lease) to permit the extraction of aggregates was made between your Council and the applicant or between MKPT and therefore who derived the financial benefit? Also if it was MKPT did the Trust need the written approval of your Council to enter the agreement? If it did, I assume that the approval was given by the Council and/or one of its committees. If so, I shall be grateful for a copy of the officer's report to committee and the committee minute."*
5. On 6 January 2011, MKC provided a response to the first three items of the same request. It stated that it hoped to provide the complainant with a response to items 4 and 5 by the end of the following week. Although the parties exchanged further correspondence on related topics, MKC did not provide any further response on these two points.

Scope of the case

6. On 28 February 2011, the complainant contacted the Commissioner to complain about the public authority's failure to respond to items 4 and 5 of his request.
7. There followed an exchange of correspondence between the Commissioner and the complainant to clarify elements of his complaint.
8. On 19 July 2011 the Commissioner wrote to MKC about its failure to provide a timely response and urged it to respond as soon as possible. It did so in a letter to the complainant dated 18 August 2011. It concluded that it did not hold the information in question.
9. Consequently, on 24 August 2011 the Commissioner wrote to the complainant and asked him whether he was now content to withdraw his complaint. The complainant provided an equivocal response on this point in a letter received on 9 September 2011.
10. The scope of this case is therefore to consider whether MKC has complied with the requirements of regulation 5 of the EIR.

Reasons for decision

Regulation 2

11. The Commissioner has considered whether the requested information is environmental information as defined by the EIR.
12. In this case the request focuses on information relating to the ownership of an area of land in the Ouse Valley, including mineral rights. The request also covers matters relating to the extraction of aggregates.
13. Bearing this in mind, the Commissioner considers that this information falls within regulation 2(1)(c) of the EIR, in that it is information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers all of the requested information, if it were held, would be environmental information.

Regulation 5

14. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
15. The complainant submitted his request for information on 2 December 2010. MKC did not provide the complainant with the requested information until 18 August 2011. Consequently the Commissioner finds that MKC has breached regulation 5(2) of the EIR, in that this information was not provided to the complainant within 20 working days.

Right of appeal

16. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF