

Freedom of Information Act 2000 (Section 50)
Environmental Information Regulations 2004

Decision Notice

Date: 22 September 2011

Public Authority: East Lindsey District Council
Address: Tedder Hall
Manby Park
Louth
Lincolnshire
LN11 8UP

Summary

The complainant submitted a request to East Lindsey District Council ('the council') for information about planning permissions. The public authority stated that it did not hold any information relevant to the complainant's requests. The Commissioner has investigated and is satisfied that the council does not hold any information that falls within the scope of the complainant's requests. It has however breached regulation 14(3)(a) by failing to cite the exception at regulation 12(4)(a) in its refusal notice. The Commissioner does not require the council to take any further action.

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 12 August 2010, the complainant sent the council a letter regarding his wider complaint about the general situation regarding the access road. Within this letter the complainant stated that he wished to obtain various

documents. On 16 August 2010, the council wrote to the complainant and summarised his request as follows:

- Any planning permissions granted or applied for in respect of access to Numbers [x] and [x] Keddington Road
- The original planning permission granted to [name] for the construction of number [x] Keddington Road
- The planning permission granted to [name] for the construction of a pre-fab bungalow in 1957
- Correspondence between East Lindsay District Council and Trading Standards regarding the sale of numbers [x] and [x] Keddington Road by [name] in 1977
- Correspondence between East Lindsay District Council and Bridge McFarland regarding the 1987 conveyance to the sitting tenant, [name]
- Correspondence between East Lindsay District Council and Bridge McFarland regarding the 1989 conveyance of number [x] to [name]
- Correspondence between East Lindsay District Council and Haddon Owen regarding the 1988 conveyance of number [x] to you, [name]
- Correspondence between East Lindsay District Council and Lincolnshire County Council regarding their investigation relating to the 1995 agreement between you and [name]"

The council stated that it would process the request on these terms unless the complainant clarified or corrected its interpretation of the request. On 18 August 2010 the complainant wrote to the council and stated that the list appeared to be "fairly comprehensive", although the 1988 conveyance was made by Beetenson and Gibbon rather than Haddon Owen.

3. The council responded to the complainant on 10 September 2010. This response stated that the council did not hold any of the requested information.
4. The complainant wrote to the council to express its dissatisfaction with this response on 13 September 2010. In particular, the complainant stated that he believed that the council's planning department did hold relevant records, and that records might be archived by Lincolnshire

County Council. Also, he suggested that if solicitors' records of searches were not held, then the council could obtain these records from the solicitors in question.

5. On 30 September 2010 the council wrote to the complainant to state that the issues raised were "...a repeat of matters that you have raised with us on previous occasions and to which we have provided you with comprehensive answers" and that it would not become involved again.

The Investigation

Scope of the case

6. The complainant initially contacted the Commissioner to complain about the way his request for information had been handled on 16 September 2010. The complaint became eligible for formal consideration once the complainant had provided all the relevant documents, on 24 March 2011.
7. The Commissioner has considered whether parts of this request should have been handled under the provisions of the Data Protection Act 1998 ('the DPA'). The council has stated that upon reflection it feels that some of the requests should have been viewed as Subject Access Requests. The Commissioner considers that if the council held any information in response to the final two requests, some of this could potentially constitute the complainant's personal data. However, given that the council's position is that no information is held, the Commissioner has been unable to review information relevant to the requests to see if it is personal data. In light of this, the Commissioner has not excluded any of the requests from the scope of this decision notice. He has however also conducted an assessment of whether the council complied with the DPA when dealing with this request. This assessment found that the Council was likely to have complied with its obligations under the DPA.

Chronology

8. On 26 July 2011 the Commissioner wrote to the council with some queries about the request. The council responded on 15 August 2011.

Analysis

Substantive Procedural Matters

Regulation 2

9. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
10. The Commissioner considers that the information requested falls within regulation 2(1)(c): “measures (including administrative measure), 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 these elements”. This is because planning permissions and conveyances of a property are ‘measures’ that would be likely to affect the elements of the environment as set out in regulation 2(1)(a). The Commissioner therefore considers the information requested by the complainant to be environmental information.

Regulation 5

11. Regulation 5(1) provides that a public authority that holds environmental information will make it available upon request. Where there is a dispute about whether information is held, the Commissioner will make a decision using the civil standard of the balance of probabilities test.
12. The complainant has informed the Commissioner that [x] Keddington Road was built in 1957. It is unclear when [x] Keddington Road was built. The council has explained that it holds some records of planning permissions granted since 1948, when the requirement for such permissions came into force. However it only retains complete records of planning permissions from 1974 following the reorganisation of local government in England and Wales.
13. The complainant has also requested correspondence between the council and Trading Standards. The complainant suggests that Trading Standards would have been made aware of issues relating to his property as it shared a building with the council for a period. The council however states that Trading Standards has never been under the authority of the council and there has never been any duty to share information between the two organisations. Trading Standards has also never been included within the enquiries of local authorities search relating to properties.

14. Similarly the complainant requested correspondence between the council and various firms of solicitors regarding the conveyance of the properties. The council has confirmed that it would only correspond with solicitors regarding issues raised by a local authority search. It does not retain records of searches undertaken prior to 2001. The properties in question were sold before this date.
15. The complainant suggests that the council "must" hold information because it is able to collect council taxes, because

"...how else do they collect the local taxes? Who would have advised the postal authorities? How else are they on the electoral roll? Every resident is recorded by the local council..."

The Commissioner agrees that the council is likely to hold some information relevant to the property and its occupants in order to carry out the functions mentioned by the complainant. However he observes that none of these functions relate to the information that the complainant has requested, which relates to planning matters and conveyances of the property.

16. The council has also provided the Commissioner with evidence of the searches it conducted for the requested information. The Commissioner is satisfied that these searches were appropriately thorough and properly targeted. Consequently he accepts that on the balance of probabilities the council does not hold any information relevant to the complainant's requests

Regulation 14

17. Regulation 14(3)(a) provides that a refusal notice should specify any exceptions that a public authority relies upon. In this case, the council responded to the request under the Freedom of Information Act. Under section 1(1)(a) of the Act, a public authority that does not hold the requested information needs only to state this in its response.
18. However, the Commissioner has determined that this request should have been dealt with under the provisions of the EIR. Regulation 12(4)(a) of the EIR provides an exception which should be cited where information is not held. As the council failed to cite this specific exception, the Commissioner finds a breach of regulation 14(3)(a).

The Decision

19. The Commissioner's decision is that East Lindsey District Council does not hold any information within the scope of the complainant's request. It has

however breached regulation 14(3)(a) by failing to cite the exception at regulation 12(4)(a) in its refusal notice.

Steps Required

20. The Commissioner does not require the council to take any further action.

Right of Appeal

21. 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: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

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.

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

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1)

In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic 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;

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1)

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 11 - Representation and reconsideration

Regulation 11(1)

Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

Regulation 11(2)

Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

Regulation 12 - Exceptions to the duty to disclose environmental information

Regulation 12(4)

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;

Regulation 14 - Refusal to disclose information

Regulation 14(3)

The refusal shall specify the reasons not to disclose the information requested, including – any exception relied on under regulations 12(4), 12(5) or 13