

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

Decision notice

Date: 5 March 2012

Public Authority: East Staffordshire Borough Council

Address: The Maltsters
Wetmore Road
Burton-upon-Trent
DE14 1LA

Decision (including any steps ordered)

1. The complainant requested copies of all internal correspondence regarding Longcroft Farm from East Staffordshire Borough Council (ESBC). The authority provided some information relevant to the request however the complainant was concerned that ESBC had not provided all of the information. During the Commissioner's investigation of this complaint ESBC has consistently refused to accept that it was a separate request to a previous and related request from the complainant originating in July 2009. The Commissioner therefore had no option but to rely on his powers under section 51(1)(a) of the Freedom of Information Act 2000 ('the Act') and issue an information notice instructing ESBC to provide all information up to September 2010. ESBC appealed the information notice to the First-tier Tribunal who dismissed the appeal and ordered ESBC to comply with the Commissioner's notice. ESBC subsequently sent the Commissioner information in January and February 2012 but refused to confirm whether it was relying on any of the exceptions for all or part of the information stating that it had not been possible within the time available. It further stated that in any event, that is not apparently what is required on the face of the information notice. It also confirmed it was in the process of collating further information falling within the scope of the request which it would send to the Commissioner in due course.
2. The Commissioner's decision is that ESBC has not met the requirements of regulation 5 of the EIR as it failed to identify all information falling within the scope of the request and to consider the information to

determine whether an exception or exceptions apply to any or all of the information.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Either provide all information falling within the scope of the request to the complainant or issue a valid refusal notice in compliance with regulation 14 of the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply 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.

Request and response

5. In early September 2010, the complainant made a verbal request to ESBC for the following information:

All internal correspondence/information in relation to Longcroft Farm."

6. ESBC responded on 13 September 2010 providing some information to the complainant.
7. Following an internal review ESBC wrote to the complainant on 11 February 2011. It enclosed a further bundle of information, some of which had not previously been disclosed to the complainant.

Scope of the case

8. On 11 February 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled. She was particularly concerned that ESBC had not identified all information falling within the scope of the request.
9. The Commissioner considers that ESBC has not identified all information falling within the scope of the request. He also considers that ESBC has failed to inform the Commissioner whether it believes that any exceptions apply to some or all of the information.

Reasons for decision

Regulation 2

10. The Commissioner has considered whether the requested information is environmental information as defined by the EIR.
11. In this case the information relates to concerns over planning matters and the importation of material forming bunds on a farm. The Commissioner considers that the 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. He is therefore satisfied that it is environmental information.

Regulation 5(1)

12. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information should be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
13. Whilst regulation 5(4) states that:

"For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes."
14. On 19 April 2011 the Commissioner contacted ESBC for further information in respect of this complaint and set out the scope of the complainant's request stating:

...the information requested was in respect of all internal information held in relation to Longcroft Farm...
15. On 19 May 2011 ESBC responded, enclosing a file of information. However, it refused to accept that this was a new request for information stating that:

"...in actual fact this request originated in July 2009."
16. That there had been a previous and related request in July 2009 was not in dispute. The information requested in July 2009 asked for all correspondence between ESBC and Staffordshire County Council in relation to Longcroft Farm and was investigated by the Commissioner

under case reference number FER0280929. However, as stated in paragraph 5 of this Notice, this request asked for all internal correspondence relating to Longcroft Farm.

17. On 19 August 2011 the Commissioner contacted ESBC setting out the chronology of the request. He also confirmed that ESBC was initially made aware of this new request by the ICO but pointed out that a (former) employee of ESBC had accepted the new request verbally in a telephone conversation between himself and the complainant in early September 2010. The Commissioner confirmed that as the request related to environmental information, a verbal request would in fact be valid.
18. The Commissioner also informed ESBC that the file of information it had sent in May 2011 appeared incomplete as it only held information up to 2009. He therefore asked ESBC to revisit its records with a view to identifying additional information falling within the scope of the request up to and including early September 2010. The Commissioner also informed ESBC that it would need to provide its arguments in support of any exceptions it may wish to rely on for any or all of the information.
19. ESBC responded on 2 September 2011 confirming that:
"...the Council's view remains that we are dealing with one request, namely that dated 17 July 2009 and that the various further documents ...fall under the auspices of the original request."
20. ESBC therefore confirmed that it did not consider any information held after this date fell within the scope of the complainant's request.
21. The Commissioner reiterated the chronology of the request (as outlined in his letter of 19 August 2011), in a telephone call with ESBC on 8 September 2011. During the conversation, ESBC informed the Commissioner that assuming that it accepted that the request was separate, it did not believe that it held any additional information. It did however agree that it would check this and confirm whether or not this was correct at a later date.
22. The Commissioner received further correspondence from ESBC on 12 September 2011 reaffirming that it did not consider the request to be new but part of the original request of 17 July 2009 and confirmation that it would not therefore be providing information up to September 2010.
23. The Commissioner therefore had no option but to rely on his powers under section 51(1)(a) of the Act and issued an information notice on 19 September 2011 instructing ESCB to provide all relevant information up to September 2010.

24. ESBC appealed the information notice to the First-tier Tribunal (Information Rights). Following the Tribunal's dismissal of the appeal on 29 December 2011, ESBC forwarded some additional information relating to planning applications to the Commissioner in January 2012. However, the Commissioner pointed out to ESBC that the request for 'all internal correspondence relating to Longcroft Farm' was much broader than information relating to planning applications for Longcroft Farm and asked ESBC to undertake a thorough search of its records to identify all information relevant to the request.
25. On 14 February 2012 ESBC contacted the Commissioner with a query regarding the identification of information falling within the scope of the request. The Commissioner provided some guidance but confirmed that ultimately it is the responsibility of the public authority to do this, particularly as the public authority has the benefit of having sight of the information.
26. On 20 February 2012 the Commissioner received further information from ESBC which it had identified as relevant to the request. Unfortunately, there remained outstanding information as confirmed by ESBC on 15 February 2012 in an email which stated:

"I am still waiting for a number of documents ...I will send any further documents under separate cover as and when they are sent to me."
27. ESBC also failed to consider the information it had sent for any exceptions it believed may be engaged.
28. The Commissioner therefore concluded that the most effective way of progressing this complaint was to issue a decision notice and duly informed ESBC of his decision. For the avoidance of doubt, the Commissioner wishes to make clear that he considers the request of September 2010 was a distinct and separate request from the one made in July 2009.
29. During February 2012, ESBC contacted the complainant informing her that:

"...the ICO has now asked the Council to send them 'All correspondence and information the Council holds regarding Longcroft Farm up to and including early September 2010'..."

Sadly, the ICO has not been able to tell us at any stage what information you are actually requesting now."
30. As the Commissioner pointed out to ESBC on 14 February 2012 and referred to in paragraph 25 of this notice, it is the responsibility of each public authority to identify all information falling within the scope of a

request for information. The fact that ESBC appear to blame the Commissioner for not making clear what has been requested is an indication of their lack of engagement with the applicant and a failure to understand that the responsibility of dealing with the request falls to the public authority receiving the request.

31. Rather than reading this as a request to the applicant for further clarification, as per section 9(2) of the EIR, the Commissioner believes ESBC has already demonstrated that it understood what information was being sought by its letter to him dated 19 May 2011 which states that the complainant's request:

"...stems from concerns over planning issues at a farm near her home. Specifically, she is concerned here with the importation of materials forming bunds on that farm."

In any event, the request itself was for '**all internal correspondence/information in relation to Longcroft Farm**' [emphasis added], leading the Commissioner to believe that any objective reading of the request can only lead to the understanding that this is unambiguous in its meaning. If subsequent exchanges result in the conclusion that the main point of interest is that stated above, then demonstrably, clarification has already been sought.

32. The Commissioner does not therefore consider it was necessary for ESBC to have contacted the complainant in such terms, if there are differences in opinion over how the EIR should be interpreted, then this is an issue that should be taken up with the Commissioner and argued through the appropriate channels. To engage the complainant in such a manner did nothing to further the requestor's desire for information and the Commissioner can see no grounds to frame the sentiment within regulation 9 of the EIR (advice and assistance).

Other matters

(a) Advice and assistance

33. The Commissioner is concerned that ESBC failed to provide appropriate advice and assistance as provided for under regulation 9 of the EIR to the complainant in relation to the procedures for requesting an internal review.
34. The complainant contacted ESBC by telephone on 13 October 2010 to express dissatisfaction with its response to her request. However, she was not informed at this time that she would need to submit a written request for an internal review.

35. Not having informed the complainant of this, and having assured the Commissioner on a number of occasions that it would conduct the internal review, the Commissioner contacted ESBC on 29 November 2010 to enquire about the progress of the review. ESBC informed the Commissioner that as it had not received the request for an internal review in writing it was considering timing out the request.
36. Despite the Commissioner pointing out that the complainant was not an expert in the procedural requirements of the EIR and that ESBC had not made her aware of these requirements on 13 October 2010, ESBC subsequently contacted the complainant on 30 November 2010, informing her that she would have to submit a written request for an internal review.
37. The Commissioner believes that this is not indicative of appropriate advice and assistance under regulation 9 of the EIR and expects complainants to be informed of the correct procedures if ESBC receives any future verbal requests for an internal review.

(b) Record keeping

38. The section 46 code of practice provides guidance to public authorities in relation to appropriate standards of record keeping. Although this code relates specifically to the Act, as ESBC is a public authority for the purposes of both the Act and the EIR, the Commissioner is concerned that ESBC's record keeping may not adhere to the minimum standards stipulated in the code.
39. For example, ESBC failed to make a record of the telephone conversation which took place in early September 2010 between the complainant and one of its employees during which the complainant provided details of her new request. Had ESBC made a record of this conversation, many of the delays associated with the investigation of this complaint could have been prevented.
40. More recently, ESBC has contacted the Commissioner for guidance in relation to identifying all information falling within the scope of the request. It appears from this query and ESBC's recent letter to the complainant referred to in paragraph 29 of this notice, that it is having difficulty identifying all information relevant to the request. This is not indicative of an effective system of record keeping.

Right of appeal

41. 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

42. 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.
43. 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