

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

Decision notice

Date: 10 December 2012

Public Authority: Lynton and Lynmouth Town Council

Address: Town Hall
Lee Road
Lynton
Devon
EX35 6HT

Decision (including any steps ordered)

1. The complainant has requested information about a piece of his land which Lynton and Lynmouth Town Council (the Council) registered as their own with the Rural Payments Agency. The Commissioner's decision is that the Council has provided all the information that it holds. No further action is required.

Request and response

2. On 15 August 2011, the complainant wrote to the Council and requested information in the following terms:

"Could you please supply me with a plan of what land is to be registered [with the Land Registry, as discussed at the Council meeting of 18 May 2011],

And can you confirm that the land being registered is not any part of the land that I own – enclose copy of my land registry."

3. On 11 November 2011, the complainant wrote to the Council and requested information in the following terms:

"[I require] you to explain your position in not allowing me to register my land with Rural Payments Agency. I request this information under the Freedom of Information Act.

I understand [redacted name], the previous owner of my land at [complainant's address], offered the land to Lynton Town Council, free of charge. I would like to know what meeting this was discussed at by the Councillors and I also request a copy of the minutes of the meeting that [the previous owner's] proposal was discussed at."

4. On 12 March 2012, the complainant wrote to the Council and requested information in the following terms:

"[C]an you let me know the names of the councillors with which [the previous owner's offer] was discussed.

I have not received "copies of correspondence with the Rural Payments Agency" please send them to me.

The map, that I did receive, did not explain anything – can you clearly explain what the map represents. Also I would request colour coded maps (with explanations) of all the land that L+LT Council own; rent; are registering; or intending to register in the future.

Would you please send me details and forms of L+LT Council's complaints procedure. [sic]"

5. On 20 May 2012, the complainant wrote to the Council and requested information in the following terms:

"I want to know what money L+L Town Council claimed on the land, that I now own, over the previous years. What subsidies and grant money they claimed on this land. [sic] Can L+LTC explain what the £2445.25 RPA payment is for and what relevance is this to what I have been asking?"

6. The Council has disclosed the following:

- The map requested on 15 August 2011
- Details for the Council's complaints procedure requested on 12 March 2012
- Figures, relating to the request of 20 May 2012, which show the money the Council had claimed since 2005 for an area of land that includes the section now owned by the complainant

7. For all other requests the Council have stated they do not hold any relevant information.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. He considered the answers supplied to be too vague, and that the Council were taking too long to provide any information.
9. The Commissioner considers the scope of the case to be whether the Council has complied with the Freedom of Information Act 2000 (the Act) and the Environmental Information Regulations 2004 (EIR), and supplied all the relevant information it holds pertaining to the complainant's requests.

Reasons for decision

Is the information environmental?

10. Regulation 2 of EIR states that (emphasis has been added):

"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...*

*(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;"*

11. For a request to be considered under the EIR instead of the Act the information must relate to environmental matters as outlined in the EIR.
12. Having reviewed the requests the Commissioner considers that all of the requests are for environmental information except for:
 - the second request of 11 November 2011

- the first and fourth requests of 12 March 2012
13. As these requests are not for environmental information they will be dealt with under the Act.

Right of access to information held by public authorities

14. Regulation 5(1) of EIR states that:

"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."

15. Section 1(1) of the Act states that:

"Any person making a request for information to a public authority is entitled:

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and .

(b) if that is the case, to have that information communicated to him."

16. In cases where a dispute arises over the extent of the recorded information, the Commissioner decides whether on the balance of probabilities a public authority held the information at the time of the request.
17. The Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the Council to check whether the information was held, and arguments from the Council to explain why the information may or may not be held.

Request of 15 August 2011

"Could you please supply me with a plan of what land is to be registered [with the Land Registry, as discussed at the Council meeting of 18 May 2011]"

18. The complainant has confirmed in his own request of 12 March 2012 that he received a map of the land that the Council registered with the Land Registry.

"And can you confirm that the land being registered is not any part of the land that I own – enclose copy of my land registry."

19. The Council registered part of the complainant's land with the Rural Payment Agency, which has prompted the requests. The Council has

since admitted fault and amended their registrations forms to avoid a similar error occurring in the future.

Request of 11 November 2011

"[I require] you to explain your position in not allowing me to register my land with Rural Payments Agency. I request this information under the Freedom of Information Act."

20. The Commissioner considers this request to contain words that make the request subjective. Public authorities are not obliged to "explain" positions but to provide information or documents held in their records. Furthermore, the phrase "not allow" implies that the Council purposefully blocked the complainant from registering his land with RPA. The two parties in this case disagree whether this was done intentionally, but as no evidence has been produced which proves this intention the Commissioner cannot accept it as fact.
21. The Commissioner asked the Council whether any information exists which showed the reasoning behind the decision to register the land with RPA. The Council stated that there is no recorded information explaining why this decision was taken. They maintained that they made a claim for the complainant's land by mistake and amended their claim form when it was brought to their attention.
22. The complainant has not provided any evidence to suggest that the Council was intentionally trying to stop him from gaining payment for land that he owns. Therefore the Commissioner's decision is that on the balance of probabilities it is unlikely that any relevant information is held.
23. The Council explained to the Commissioner the process by which land is registered. RPA send a pre-populated form that lists the areas of land the Council were claiming for in the previous year. This form is then either sent back unaltered, or amended to include new additions or reductions for the claim. The Commissioner spoke to RPA and they confirmed this is the procedure they follow and stated that there is no other correspondence involved in this process.
24. The Commissioner's decision is that on the balance of probabilities it is likely that this pre-populated form is the only correspondence between the Council and RPA regarding the registering of the complainant's land. The Council stated they do not keep copies so there is no relevant information to disclose to the complainant.

"I understand [redacted name], the previous owner of my land at [complainant's address], offered the land to Lynton Town Council, free of charge. I would like to know what meeting this was discussed at by

the Councillors and I also request a copy of the minutes of the meeting that [the previous owner's] proposal was discussed at."

25. The Commissioner asked the Council for information about the meeting where the previous owner offered what is now the complainant's land to the Council. The Council stated that it was not at a council meeting, but that a member of staff had met with the previous owner to discuss the matter. This member of staff then raised the offer with the Council Chairman, but no written record of these conversations was kept.
26. The former Council clerk advised the complainant that "I was instructed to pursue the possibility of acquiring the land from [the previous owner] but you had already purchased it". The complainant has stated that the previous owner of the land offered it free of charge to the Council in 2007. As he did not purchase the land until 2011 he has stated this suggests the negotiations were going on for nearly 4 years and there should be some record for this.
27. To support this statement the complainant has supplied a copy of the land registry form held by the previous owner which does confirm that they held the land in 2007. However, the Council explained that there is currently no available evidence that suggests an offer was made at that time, nor that an offer was under consideration by the Council.
28. The Council has performed all of the customary checks and searches required by the Commissioner. Based on the balance of probabilities the Commissioner considers it unlikely that there is any relevant information held for the second item of the request of 11 November 2011.

Request of 12 March 2012

"[C]an you let me know the names of the councillors with which [the previous owner's offer] was discussed."

29. As mentioned previously, the offer was not raised with the Council at a meeting but instead was raised informally with the Council Chairman. The Commissioner considers it unlikely that there is any record of this.
30. The Council has also confirmed that there is no record of the informal discussion being raised with the other Councillors. As the matter was not raised at a Council meeting the Commissioner considers that on the balance of probabilities it is unlikely there is a record concerning this issue being raised with other Council members.

"I have not received "copies of correspondence with the Rural Payments Agency" please send them to me."

31. The Commissioner has previously explained the issue of correspondence between the Council and RPA, and accepts that the Council is unlikely to hold any recorded information about correspondence between the Council and RPA.

"The map, that I did receive, did not explain anything – can you clearly explain what the map represents. Also I would request colour coded maps (with explanations) of all the land that L+LT Council own; rent; are registering; or intending to register in the future."

32. The Council has confirmed that it does not hold a copy of a map in the manner which the complainant has requested, nor does it have any recorded information to explain what the map represents.

33. Regulation 3(2) states that environmental information is held by a public authority if it is in the possession of the authority and has been produced or received by the authority. A public authority is not required to create information in order to satisfy a request.

"Would you please send me details and forms of L+LT Council's complaints procedure. [sic]"

34. The Council has confirmed that it has supplied the details of their complaints procedure to the complainant, and has confirmed there is no form held.

Request of 20 May 2012

"I want to know what money L+L Town Council claimed on the land, that I now own, over the previous years. What subsidies and grant money they claimed on this land. [sic] Can L+LTC explain what the £2445.25 RPA payment is for and what relevance is this to what I have been asking?"

35. The Council has provided the complainant with a table which shows how much they have claimed from RPA for the period 2007 – 2011 for an area of land, part of which belongs to the complainant.

36. The Commissioner explained that the scope of the request was not limited to that period and asked if the Council held any additional relevant information from before 2007. The Council then disclosed information about previous payments it had received in 2005 and 2006. It confirmed that nothing further is held.

37. Regarding the payment of £2445.25, the Council stated that it was a grant from the RPA for a specified area of land, which includes the area of land owned by the complainant. This information has been disclosed to the complainant.

38. The Council has performed the routines searches for the relevant information to this request and the Commissioner is satisfied that on the balances of probability it is unlikely anything further is held.

Other matters

39. The Council did not provide the complainant with the information he requested on 15 August 2011 within 20 working days. This is a breach of regulation 5(2) of the EIR.
40. The Council held further information to the request of 20 May 2012 which was not revealed to the Commissioner or disclosed to the complainant until the Commissioner sought verification that nothing further was held. This is a breach of regulation 5(1) of the EIR.
41. The Commissioner wishes to remind the Council that where any information requested would constitute the personal data of the requestor, that information should be considered in accordance with the subject access provisions of the Data Protection Act 1998. However, in this case, the Commissioner accepts that this would not ultimately have resulted in the complainant being provided with further information.

Right of appeal

42. 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

43. 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.
44. 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
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