

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

Date: 22 January 2013

Public Authority: Holme Valley Parish Council
Address: Council Chamber
Council Offices
Huddersfield Road
Holmfirth
West Yorkshire
HD9 3JP

Decision (including any steps ordered)

1. The complainant requested information from Holme Valley Parish Council ("the council") relating to the registration of particular land with the land registry in 2006. The council said that it did not hold any relevant information because all its records about the matter had been transferred to a land charity of which the council is the sole trustee.
2. The Commissioner's decision is that the request should be considered under the terms of the Environmental Information Regulations ("the EIR"). During the Commissioner's investigation, the council conceded that it held further relevant information, which was made available to the complainant. The Commissioner found that on the balance of probabilities, no further information falling within the scope of the request was held by the council with the exception of information that may be held within archived minutes. The Commissioner found breaches of regulation 5(1) and 5(2) of the EIR because of the late disclosure of relevant information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation. In relation to information that may be held in archived hardcopy council minutes, the council should

- Search the minutes and confirm or deny whether any information falling within the scope of the complainant's request was contained within them. If the council decides not to do this because a valid exception applies under the EIR, it should issue a refusal notice that complies with its obligations under regulation 14.
 - If the council is able to confirm or deny whether information was held, and if it is the case that no information was held, the council should issue a refusal notice under the EIR citing the exception under regulation 12(4)(a). If information was held, the council should either provide that information or, if it considers that an exception applies, issue a valid refusal notice that complies with its obligations under regulation 14.
4. The Commissioner would like to draw the council's attention to guidance materials available on his website at the following link to help the council respond under the EIR:
- http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx
5. 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 16 January 2012, the complainant requested information from the council in the following terms:

"I would like to request the following information from Holme Valley Parish Council relating to the registration of parcels of land with the land registry in 2006:

- 1. Details and dates of the process followed by the Council leading up to and including the registration of land to the south west of Top o'th Bank, Thurstonland with the land registry, title number WYK821616 in 2006.*
- 2. All documentation and or certification issued and used by the Council leading up to and including the registration of the land listed in point 1.*
- 3. The name and address of the solicitors acting on behalf of the Council in the registering of the piece of land listed in point 1 in 2006".*

7. The council replied on 7 February 2012 and said that it was not in a position to provide the information as it is no longer held by the council. It said that all information relating to the matter is now held by Holme Valley Land Charity.
8. The complainant requested an internal review on 2 March 2012.
9. The council completed an internal review on 19 March 2012 and said that it wished to maintain its position.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She asked the Commissioner to consider whether the council had responded properly to her request for information by claiming that it did not hold any relevant information.
11. The Commissioner has already issued a decision notice on 28 February 2012 relating to similar issues, involving a different complainant. For ease of reference, the decision may be accessed via the following link:
http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx
12. In brief, in the previous decision notice referred to above the Commissioner found that on the balance of probabilities, the council was wrong to claim that it no longer held any information relating to the registration of these plots of land purely on the basis that the records had since been transferred to a land charity, of which it is the sole trustee. The Commissioner's full rationale was set out in detail in that notice and the Commissioner does not consider that it is necessary to repeat it here.
13. When the Commissioner referred the council to his previous decision notice, the council conceded that it did hold relevant information falling within the scope of this particular request. It pointed out that this had already been made available to the complainant involved in the previous case, who is known to the complainant in this case. The complainant confirmed to the Commissioner that she had viewed this information and did not wish to receive any further copies of it. She clarified that her complaint was that she believed that the council held more information than it had identified relating to the particular area of land forming the subject of this complaint. The Commissioner's notice therefore only concerns this outstanding issue.

14. When the Commissioner asked the complainant if she could be more specific about what information she believed the council had failed to identify, she referred to minutes of meetings and decisions taken by the council and land charity after she had made them aware of her legal title to the land. The council informed the Commissioner that it became aware of the complainant's interest in this particular area of land after the land charity had been established in January 2009. The area of land that is the subject of this complaint was registered at the Land Registry in 2006, along with others. The Commissioner notes that the complainant has asked for documentation about the council's actions leading up to and including the registration of the land. In the Commissioner's view, information about events that took place after the registration in 2006 falls outside the scope of the request and has therefore not been investigated by the Commissioner.
15. For clarity, the council also indicated to the Commissioner that it was not always apparent from its records whether information related to the particular area of land referred to by the complainant. The complainant agreed that her complaint could be limited only to information that mentions the particular area of land she is interested in specifically.
16. During the Commissioner's investigation, the details of the solicitors firm requested in point 3 of the request were confirmed. Further documents were also provided by a firm of solicitors. It was also confirmed that the minutes for the last four years are available on the council's website. As this information has been made available, the Commissioner has treated these aspects of the complaint as informally resolved.

Reasons for decision

Regulation 5(1) – Was more information held?

17. Regulation 5(1) of the EIR provides a general right of access to environmental information held by public authorities. "Environmental information" is defined by regulation 2 of the EIR. For an explanation as to why the Commissioner considers that this information is environmental, please see the previous decision notice referred to in paragraph 11.
18. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the

authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹

19. The Commissioner asked the complainant if she could be more precise about why she believed further information was held by the council which it had not made available. The complainant produced a list, (reproduced directly by the Commissioner below) although she did stress that the list was not to be taken as an exhaustive one. As mentioned in the Scope of the case section of this notice, the Commissioner considers that the information described in the penultimate bullet point falls outside the scope of the request.
- "Letters or documents, e-mails, plans and maps etc to and from the Land Registry
 - Letters or documents, e-mails, plans and maps etc to and from The Charity Commission
 - Letters or documents minutes of meetings on how this piece of land was initially identified by the council and the decision to register it
 - Letters or documents relating to searches that should have been carried out by the Council
 - Any certificates of indemnity issued by the council in regard to this piece of land
 - Letters or documentation, minutes of meetings etc in response to the DX from Land Registry to Lupton Fawcett LLP
 - Any public consultation documentation and its outcomes
 - Minutes of meetings and decisions taken by the council and land charity after we made them aware of our legal title to the land
 - Confirmation that Lupton Fawcett were the legal advisors and team that acted for the Council in this matter at the time the land was registered".
20. The council confirmed to the Commissioner that it wished to maintain its position that the council held no further information on its own premises, with the exception of information that may be held in archived minutes (discussed further below). The council highlighted that the current clerk had only worked at the council since March 2008 and neither the former clerk nor the deputy clerk from the time are in regular contact with the council and had therefore not been consulted.

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

However, the council said that it was satisfied that it did not hold any relevant information on its own premises. It highlighted that its records had been transferred to the land charity when it was established and its current computer system only holds correspondence for a period of two years and it is then destroyed as part of a "rolling programme". The council said that it does not keep any records of the destruction of specific documents. The council said that this was in accordance with its records management policy, which it provided to the Commissioner.

21. The land charity was created in January 2009, resulting in the council transferring its records to the charity's premises. The council told the Commissioner that it was satisfied that no more information was held on its behalf by the land charity other than that already provided. It said it had consulted the secretary of the land charity directly about the request, and it had carried out a further review of the relevant files to check that no further information was held. It also confirmed that it has not aware that any information had been deleted, destroyed or mislaid.
22. The council told the Commissioner that it had been necessary to give further consideration to the question of whether any more relevant information was held by the legal firms that acted on behalf of the council in relation to the quarries. The council told the Commissioner that the legal firm, Lupton Fawcett, had been involved in the voluntary registration scheme (including the site at Thurstonland which is the subject of this particular complaint) from early 2005 onwards. However, prior to the involvement of that firm, the council was assisted by the firm Ridley and Hall Solicitors.
23. In relation to Lupton Fawcett, the council said that it had sought confirmation that no further information was held by this firm and after having initially been told that no further information was held, two boxes of information subsequently came to light. The council said that Lupton Fawcett had extracted the documents that mention the area of land in question. These were provided directly to the complainant during the Commissioner's investigation. The council said that it had also collected the boxes from the law firm so that it could check for itself that no further information was held. The council referred to some additional information that it had identified and provided to the complainant. It said that it was now satisfied that all the information mentioning the area of land had been provided and there was no evidence to indicate that any relevant information had been deleted, destroyed or mislaid by the law firm.
24. In relation to Ridley and Hall, the council said that it had consulted the firm and it had been confirmed that no information was held falling within the scope of this request. The council provided the

Commissioner with a copy of an email it had received from Ridley and Hall in connection with this matter in which the firm confirmed that no information was held. It was explained that all files were transferred from Ridley and Hall to Lupton Fawcett when the latter firm took over the voluntary registration scheme process. The council said this was supported by the fact that the additional information it was able to identify within Lupton Fawcett's files was mainly correspondence involving Ridley and Hall. In addition, the firm explained that that it would not have any old files since it was only required to keep files for 7 years and it had not been instructed by the council since 1997.

25. Turning now to some of the specific concerns raised by the complainant, with particular reference to minutes, the council said that in accordance with the council's records management procedures, minutes of council meetings are held indefinitely. It highlighted that copies of minutes for the last four years are published on the council's website however more information may be held in archived minutes. The council said that it had not checked archived minutes, although they may contain relevant information. The council expressed concerns to the Commissioner about the time-consuming nature of reviewing hardcopy minutes. On the balance of probabilities, the Commissioner considers that more information is likely to be held in the minutes and he has therefore ordered steps in relation to this.
26. In relation to the other categories of information referred to by the complainant, the council reiterated that nothing further was held other than that already made available. The council clarified that it was not aware that any public consultations had been conducted, nor was it aware of any indemnity certificates. It said that it consulted its solicitors about this and the solicitor had confirmed that the firm had not obtained any indemnity insurance on the council's behalf. The council said that there was no reason why it would expect to hold more information other than that already provided and it was not aware of any legal obligations to do so.
27. Clearly, the complainant was correct to assert that further information was held, but this has now been provided and the Commissioner is satisfied based on the evidence presented that thorough searches have now taken place to rectify the previous inadequate attempts to identify all the information that was held. It is possible that further information was held at one stage but has since been destroyed, and it is also possible that the complainant's expectations of what information should be held were greater than the reality. Either way, the Commissioner is satisfied to the required standard that with the exception of information that may be contained within archived minutes, no further information was held.

Other matters

Records management

28. Given the issues that arose in this case, the Commissioner considers that the council would benefit from further guidance in relation to effective records management. He would encourage the council to consider the Code of Practice under section 46 of the FOIA relating to records management. For ease of reference, the Code may be accessed via the following link:

<http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>

Right of appeal

29. 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

30. 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.
31. 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
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