

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

Date: 23 April 2013

Public Authority: The Department for Education
Address: Sanctuary Buildings
Great Smith Street
Westminster,
London SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested information about the disposal of playing fields at Elliot School in Putney which has recently been renamed Ark Academy Putney. The Department for Education (DfE) refused to provide the requested information to the complainant as it stated it was exempt from disclosure under section 36(2)(b)(i) and (ii) and section 36(2)(c) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner considers that the requested information is environmental information and therefore the request should have been dealt with under the Environmental Information Regulations 2004 (EIRs).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the request in accordance with the EIRs.
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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 August 2012 the complainant made the following request for information:

"I request a copy of the Independent School Playing Fields Advisory Panel minutes of discussions relating to Wandsworth Council's application for consent under Section 77 of the School Standards and Framework Act 1998 (as amended) to dispose of school playing fields at Elliott School in Putney."

6. On 26 September 2012 the DfE responded. It said that the information requested was exempt under section 36(2)(b)(i) and (ii) and section 36(2)(c) FOIA, however it required further time to consider the balance of the public interest in this case. On 6 November 2012 it wrote to the complainant to confirm that the public interest in favour of disclosure was outweighed by the public interest in favour of maintaining the exemption.
7. The complainant requested an internal review on 23 November 2012. The DfE sent the outcome of its internal review on 14 December 2012. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 4 January 2013 to complain about the way his request for information had been handled.
9. Upon reviewing the complaint, the Commissioner wrote to the DfE to explain that he considered that the request was for environmental information and therefore the request should have been dealt with under the EIRs. The DfE responded and confirmed that it considered that it was correct to deal with this request under FOIA.
10. The Commissioner has therefore considered whether or not the DfE has dealt with this request under the correct legislation.

Reasons for decision

11. Regulation 2 of the EIR defines environmental information as being any information 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;*
- (d) reports on the implementation of environmental legislation;*
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c)."*
12. In this instance the Commissioner has been provided with a copy of the withheld information. It relates to the disposal of school playing fields at Elliot School in Putney.
13. The DfE explained that the Panel considers such disposal applications against criteria set out in published guidance and there is no reference to future use of the land in those criteria. It also explained that the Secretary of State would not have considered that information when reaching a decision on whether to give consent to the disposal of the land. It confirmed that both the Panel and the Secretary of State are only concerned with the educational impact of disposal of the playing field land rather than with any subsequent use of the land. It therefore concluded that the withheld information is of an educational nature and not environmental.
14. The DfE did however explain that in this case the proposed use of the land, once disposed of, is for housing development. It said that this information would have been included in the Council's application for consent to dispose of the land. However it reiterated that such

information would not have formed part of the Advisory Panel's deliberation of whether the land should be disposed of.

15. The Commissioner considers that despite the fact that the intended future use of the land did not form part of the decision making process as to whether or not to sanction its disposal, the fact that it is being disposed of is a measure under regulation 2(c) EIR likely to affect the elements of the environment. This is because of the potential change to the use of the land.
16. Regulation 5 of the EIR places a public authority that holds environmental information under a duty to make that information available on request, unless an exception applies.
17. In this instance, the DfE did not deal with the request for information in accordance with the EIR as it did not apply the correct legislation when handling the request.

Right of appeal

18. 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

19. 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.
20. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
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