

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

**Decision notice**

**Date:** 18 June 2014

**Public Authority:** The Woodroffe School  
**Address:** Uplyme Road  
Lyme Regis  
Dorset  
DT7 3LX

**Decision (including any steps ordered)**

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1. The complainant has requested information broadly concerning the sale of land previously owned by Woodroffe School (the "School").
2. The Commissioner's decision is that the School has provided the complainant with all the information it holds that falls within the scope of the request.
3. The Commissioner requires the public authority to take no steps.

**Request and response**

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4. On 29 November the complainant wrote to the School and requested information in the following terms:  
  
*"[1] A copy of the original deeds for retained disposals in the accompanying attachment. (The accompanying attachment contained 5 areas of land).*  
  
*[2] The names of each transferee for each respective disposal transferred from the governing body of the Woodroffe School.*  
  
*[3] The price paid by each transferee for each respective disposal transferred from the governing body of the Woodroffe School".*

5. The School responded under the FOIA on 4 December 2013. With respect to request 1 it explained that it had contacted its solicitors with regard to obtaining a copy of the original deeds and explained it would contact the complainant in due course with a response. With regards to request 2 the School explained that due to its retention guidelines it no longer held this information. It provided some information in relation to request 3. However it explained that it could not ascertain how much the School received from the sale of one area of land (Harcombe House) but it provided the complainant with a rough estimate.
6. On 9 December 2013 the School wrote to the complainant in regards to request 1. It explained that it does not hold the original deeds to any of the retained disposals to which was referred to in request 1.
7. The complainant subsequently asked for an internal review on 28 January 2014. Later the same day the School wrote to the complainant and explained "*I have reviewed my previous replies to you and can confirm that you have been provided with all of the information that we have available to us*".

### **Scope of the case**

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8. The complainant contacted the Commissioner on 19 February 2014 to complain about the way his request for information had been handled.
9. The Commissioner has had to consider whether the School holds further information within the scope of this request.
10. The Commissioner presented the School with his initial view that the requested information was likely to be environmental information. He asked the School whether it had considered the request under the EIR. However this was not addressed in its response to the Commissioner. Consequently the Commissioner has considered whether the information requested is environmental and therefore whether it should have been dealt with under the EIR.

## Reasons for decision

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### Is any of the requested information "environmental"?

11. Regulation 2(1) of the EIR defines what 'environmental information' consists of. The relevant part of the definition are found in 2(1)(a) to (c) which state that it is any information in any material form on

*"(a) the state of the elements of the environment, such as air and atmosphere, 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..."*

12. The Commissioner's approach is to interpret "any information...on" fairly widely. He does not consider it necessary for the requested information itself to have a direct effect on the environment in order for it to be environmental information. It will usually include information concerning, about, or relating to measures, activities and factors likely to affect the state of the elements of the environment.
13. Having considered the nature and context of the requests, the Commissioner has concluded that the information falling within the scope of these requests constitutes environmental information as the sale of land is a measure such as an activity set out in (c) which is likely to affect the elements and factors of the land referred to in (a).
14. In view of this, the Commissioner has concluded that the School wrongly handled the request under the FOIA. The request should have been dealt with under the EIR.

### Regulation 12(4)(a) – is further information held

15. Regulation 12(4)(a) provides that a public authority may refuse to disclose information where it does not hold that information when a request is received.

16. Where there is a difference between the amount of relevant information identified by a public authority and the amount of relevant information that the complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of proof, the balance of probabilities. The Commissioner must decide whether on the balance of probabilities the public authority holds (or held at the time of the request) any information which falls within the scope of the request.
17. Upon receipt of the Commissioner's investigating letter, the School's solicitors informed the Commissioner that it would be responding to the letter as it felt this was more appropriate as it acted on behalf of the School in the various transactions which the complainant seeks information on.
18. The Commissioner has therefore firstly had to determine whether the information held by the solicitors regarding the sale of the land specified by the complainant is held on behalf of the School or whether the solicitors holds the information in its own right, in which case it would not be held for the purposes of EIR. In the Commissioner's guidance<sup>1</sup>, his general approach is if documents are held by a solicitor in connection with instructions received by the solicitor, the information is held on behalf of the client.
19. The solicitors have confirmed that it acted on behalf of the School in the various transactions which the complainant seeks information on. The Commissioner is therefore satisfied that the solicitors were instructed by the School to hold the information on its behalf.
20. The Commissioner will now consider whether any further information is held within the scope.
21. During the Commissioner's investigation the solicitors found further information within the scope of the request. Specifically it provided the complainant with information regarding three areas of land. The solicitors detailed this information in a letter with attachments which was sent directly to the complainant.

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx)

22. The Commissioner is satisfied that on the balance of probabilities the complainant has received all the information that is held regarding the three areas of land.
23. However in relation to the other two areas of land the solicitors confirmed that the two files relating to the sale of Harcombe House and St Andrews House had been destroyed.
24. The Commissioner returned to the complainant and explained the position in relation to this. The complainant disputed the fact that no further information is held. Specifically, he argued that further information would be held relating to the sale of Harcombe House.
25. The Commissioner subsequently returned to the solicitors to seek further information regarding the destruction of the information relating to Harcombe House.
26. It explained that the solicitors file regarding Harcombe House was closed in 1994 and its records show that the file was destroyed on 25 May 2005. It further explained that files are retained for at least the period recommended by the Law Society. For a sale file the retention period would be for a minimum of 7 years.
27. The solicitors also stated  
*"There would be no reason for the School to retain copies of deeds passed to a purchaser/transferee unless they contain evidence of continuing contractual obligations or rights reserved for the benefit of retained land".*
28. It further explained  
*"There is no business purpose for which it would have been necessary for the School to retain permanently any information on property disposals relating to the sale price or the identity of the transferees".*
29. The Commissioner also returned to the School to confirm whether any further information was held. It explained that no further information was held and the information that was initially provided to the complainant in response to his request was from old Governors Meeting Minutes. The School confirmed that these minutes have since been destroyed.
30. From the submissions provided by the solicitors and on the balance of probabilities, the Commissioner has determined that information relating to Harcombe House has been destroyed and is therefore not held.

31. The Commissioner is therefore satisfied that on the balance of probabilities, the complainant has received all the information that is held that falls within the scope of this request.

## Right of appeal

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32. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**