

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 16 October 2014

**Public Authority:** Chesterfield Borough Council

**Address:** Town Hall  
Rose Hill  
Chesterfield  
Derbyshire  
S40 1LP

#### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of the Stock Condition Survey for his property which was carried out on Chesterfield Borough Council's behalf by Savills.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the information sought by the complainant.
3. The Commissioner does not require the Council to take any further action in this matter.

#### **Request and response**

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4. On 13 November 2013, the complainant wrote to Chesterfield Borough Council ("the Council") and requested information in the following terms:  
  
"Can the Council please tell me when the properties at Church Street West (including my home at [address redacted]) – have been assessed under the Decent Homes Standard and who carried out the inspections and reports and what the findings are."
5. The Council responded to the complainant's request on 3 December 2013. It advised him of the following:

"I have contacted Savills and due to the passage of time they no longer hold the survey sheets relating to [address redacted] Church Street West. It is their policy to dispose of paper records after 5 years. However, as I promised in my email dated 10 December, please find attached a report of the data held in respect of your home from this survey."

6. The Council provided the complainant with two spreadsheets; one relating to the current decent homes position for each property at Church Street West and the other relating to the future decent homes position of those properties.
7. The first spreadsheet identified whether a paper copy of the Stock Condition Survey was available or not. Where such a copy was available, that information was sent to the complainant. The Council advised the complainant that it did not hold a paper copy of the stock condition survey where the survey had been carried out on behalf of the Council by a third party and where, due to the passage of time the Council now only holds electronic data.
8. On 3 December 2013 the complainant wrote to the Council again. In his email he identified that [address redacted] Church Street was in fact the complainant's home address and that it was last surveyed on 1 April 2007 by a Savills' surveyor. The complainant therefore asked to be provided with a copy of that survey.
9. The Council responded to the complainant's refined request on 10 December 2013. The Council again advised the complainant that it does not hold a copy of the Stock Condition Survey for his home. The complainant was informed that Savills had only provided the Council with the electronic data relating to his property and that this was now only held within the Council's 'Keystone Asset Management Database'. The Council explained to the complainant that the information was now held only in relation to building attributes and components and not in the original survey format which Savills had supplied. Notwithstanding this advice and explanation, the Council stated that it would send the complainant a 'run of data' from its electronic system.
10. On 12 December the complainant wrote to the Council once more. In his email the complainant asserted that the Council was the data controller for the data supplied by Savills and that 'any and all data, information and documents that Savills [...] holds'... should be supplied to him under his requests. The complainant stated that, 'if Savills hold the paper formats of the Survey/s carries out in 2007 at [address redacted] Church Street West, then Chesterfield Borough Council should obtain these from them and send them on to me'.

11. On 13 December 2013 the Council sent the complainant information extracted from its electronic database. The Council informed the complainant that it had contacted Savills to ask whether it holds the survey relating to [address redacted] Church Street and Savills had responded to that query by informing the Council that its policy is to dispose of paper records after 5 years.
12. On 18 December the complainant asked the Council to provide him with the full contact details for Savills.
13. The Council responded to the complainant's email on 20 December 2013. The Council provided the complainant with further clarification about the information he seeks and denied that it had refused to supply him with any of that information. The complainant was then advised to ask for an internal review of the Council's handling of his information requests.
14. On 17 January 2014 the complainant asked the Council to confirm the type of system and software it uses to hold the information he seeks. The complainant informed the Council that he knew that very old IT systems using DOS can be printed.
15. The complainant also formally asked the Council to undertake an internal review and asked the Council to confirm if Savills holds the information he seeks and to provide him with that information.
16. On 27 March the Council concluded its internal review. The Council provided the complainant with a description of its IT system and software which it uses to process the data which Savills had supplied.
17. The Council advised the complainant that the output of data from its Keystone Asset Management System is electronic to a mobile device or can be extracted into pre-designated templates in Microsoft Excel format. The Council also advised the complainant that, whilst the system 'does boast a reporting functionality' this primarily refers to electronic reporting and the standard output is in an electronic format for data analysis. User defined document templates and reports are site specific and the Council does not use this functionality.
18. The Council provided the complainant with two further spreadsheets containing information relating other properties in Church Street West. It advised the complainant that this information is held in the same format as the information previously sent to him in respect of his property and clarified that it was information which could be extracted from the Keystone database in relation to stock condition information. The Council also explained to the complainant that the information it

had sent to him previously related to asbestos surveys and that it was unable to do the same for stock condition information.

19. Finally, the Council informed the complainant that Savills does not hold the information or data which he seeks.

### **Scope of the case**

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20. The complainant contacted the Commissioner 5 March 2014 to complain about the way his request for information had been handled.
21. The Commissioner's investigation of this complaint has been to determine whether the Council holds the Savills' survey report which the complainant seeks, regardless of the format that the information may now be held in and whether the Council has failed to comply with the Environmental Information Regulations.

### **Reasons for decision**

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#### **Is the information 'Environmental Information'?**

22. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
23. Under regulation 2(1)(c) of the EIR, any information on activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land.
24. The Commissioner has considered the nature of the information sought by the complainant. He has determined that the information is environmental information and should therefore be considered under the EIR rather than the FOIA. The Council has conceded that the complainant's request should have been considered under the EIR.

#### **Is the information held?**

25. Under Regulation 5(1) of the EIR a public authority holding environmental information is obliged to make that information available on request.

26. The provisions of the EIR extend only to recorded information held by public authorities: They do not require public authorities to create information in order to satisfy a request for information.
27. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds information relevant to this request, other than the information it has previously disclosed to the complainant.
28. The Commissioner makes this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
29. The Commissioner investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction.
30. The Council has assured the Commissioner that it has provided the complainant with all the information it holds relevant to his request. The complainant was sent the information that the Council was able extracted from its KEYSTONE data base and put into a spreadsheet format.
31. The Council originally received the information from Savills on a disk so that the information may be inputted into the Council's CHAMPS database. The Council stopped using CHAMPS and the information was migrated to its KEYSTONE database.
32. The KEYSTONE database is a 'central' system. The Council has advised the Commissioner that it does not hold stock information locally. In order to locate information relevant to the complainant's request, the Council used the search term "Church Street West".
33. No information, relevant to the complainant's request, is held by the Council on paper-based records. The Council has never held paper-based copied of the surveys undertaken by Savills, as it was that information which was contained on the disk supplied by Savills.
34. The Council has searched for the disk supplied by Savills and has not been able to locate it. The Council has also asked Savills if it retained a copy of that disk and was informed that Savills do not have a copy.
35. The Council has assured the Commissioner that it has not destroyed any information associated with the complainant's request, other than the possibility that the Savills' disk may have been destroyed. That possible destruction would only have taken place once the information it

contained was transferred to the Council's CHAMPS database. The Council holds no record of the destruction of the disc.

36. Savills informed the Council that it would have held paper-based records of its surveys for 2007. However it is Savills' policy not to retain those records for more than 5 years and no paper records are now held.
37. The Council has a Corporate Record Retention and Disposal Schedule which it adopted in 2012. The retention period for asset registers is 7 years following the conclusion of the financial transaction relating to a particular record. However, the KEYSTONE database is constantly reviewed and updated so that the information it contains does not become obsolete. This ensures that the Council's records accurately reflect the current condition of its housing stock. Having an updated record provides the Council with accurate knowledge of what needs to be renewed or replaced and allows it to plan necessary future works.
38. Having considered the information and assurances given by the Council, the Commissioner has decided that the Council does not hold any further recorded information under the terms of the complainant's request. In consequence of this decision the Commissioner has determined that the Council has complied with Regulation 5(1) of the EIR. This decision is based on the Commissioner's application of the civil test and the absence of any evidence which is contrary to the Council's position.

## Right of appeal

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39. 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: 0870 739 5836

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)

40. 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.
41. 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**