

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

### **Decision notice**

**Date:** 7 August 2014

**Public Authority:** Cumbria County Council  
**Address:** The Lonsdale Building  
The Courts  
Carlisle  
Cumbria  
CA3 8NA

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

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1. The complainant has requested information associated with the War Memorial Playing Field at Arnside, Cumbria, in particular with the designation of the playing field as a Historic Environment Record ("HER").
2. The Commissioner's decision is that Cumbria County Council ("the Council") has complied with Regulation 5(1) of the EIR.
3. The Commissioner does not require the public authority to take any further steps in this matter.

#### **Request and response**

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4. On 24 March 2014, the complainant wrote to Cumbria County Council ("the Council") and asked to be provided with information in the following terms:

"...all communications, electronic or paper, telephone conversation notes of discussions etc from 2012 to date on the Historic Environment listing of Arnside War Memorial playing field.

Items relating to the re-definition of the field HER in 2013.

All correspondence paper and electronic.

To identify the process adopted and persons instrumental in it.

All communication, paper and electronic, notes telecons etc relating to the investigation undertaken into the conduct of Ms J. Mackintosh relating to the Arnside Field HER.

Who instigated the investigation?

Who agreed to do it?

On what basis?"

5. The Council responded to the complainant's request on 2 May 2014. For ease of reference the Council grouped the information sought by the complainant into three parts as follows:
  1. All communications, electronic or paper, telephone conversation notes of discussions etc from 2012 to data on the Historic Environment listing of Arnside War Memorial playing field.
  2. Items relating to the definition for the field HER in 2013. All correspondence paper and electronic to identify the process adopted and persons instrumental in it.
  3. All communication, paper and electronic, notes telecons etc relating to the investigation undertaken into the conduct of [a named officer of the Council] relating to the Arnside Field HER. Who instigated the investigation? Who agreed to it? On what basis? Outcome of the investigation and action decided. Items relating to the subsequent resignation of [a named officer of the Council], under duress. Who caused this, was it the investigation?
6. The Council provided the complainant with recorded information, including copies of correspondence, relevant to parts 1 and 2 of the request. It advised the complainant that there is no set procedure for the removal of items from the Historic Environment Records and that the decision to remove the Arnside War Memorial playing field from the register was taken by the Council's Assistant Director of Planning and Sustainability.
7. The Council also advised the complainant that there was no breach of conduct by [a named officer of the Council] and consequently there was no investigation and no information is held by the Council.
8. On 2 May 2014 the complainant wrote to the Council to complain about its response to her information request. The complainant was concerned about the failure of the Council to send her copies of emails between [a named officer of the Council] and herself; copies of notes of discussions between [a named officer of the Council], English Heritage, the War Memorial Trust and herself; copies of notes of conversations within the

Council with [the Councils Senior Historic Environment Officer] and colleagues; a copy of the certificate of listing of the Arnside HER; and, any items relating to the redefinition of the HER area.

9. On 19 May 2014 the Council wrote to the complainant again having concluded its internal review of its handling of her information request. The Council advised the complainant that it does not hold any emails between [a named officer of the Council] and herself; any notes of conversations within the Council with [the Councils Senior Historic Environment Officer] and colleagues; nor does it hold any information relating to discussions between [a named officer of the Council], English Heritage, the War Memorial Trust and herself. The Council informed the complainant that the 'certificate' of listing she possesses is a 'snap-shot' of the information contained on its system and clarified that it is not a certificate.
10. In response to the complainant's concern that the Council had not provided any information relating to the redefinition of the HER area, the Council provided the following explanation:

"The term 'recreational field' was removed from HER record 43860 on 22 February 2013. A note of this update in the HER database states; Site type 'Recreation Field' temporarily removes pending a dispute between the parish council and a member of the public; description and NGR [National Grid Reference] amended. The decision was made by the Assistant Director of Planning and Sustainability in a 1-2-1 meeting with Mark Brennand on 21 February 2013."
11. In addition to the above, the Council provided the complainant with a screenshot of the agenda of a meeting which took place on the 21 February 2013 and a screenshot of the action notes resulting from that meeting.
12. The council also reasserted its position that it held no recorded information in respect of [a named officer of the Council]. It confirmed that there had been no breach of conduct by that officer and there was no investigation. Consequently no records are held.

### **Scope of the case**

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13. The complainant contacted the Commissioner on 19 May 2014 to complain about the way her request for information had been handled.

14. The complainant expressed her concern to the Commissioner that the Council has sent only some of the information she has asked for. She asserted her belief that the Council holds more recorded information in respect of the Arnside War Memorial playing field HER which falls within the scope of her information request.

## **Reasons for decision**

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### **Is the requested information 'environmental information'?**

15. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –

'(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 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.'

16. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
17. According to information posted on the English Heritage<sup>1</sup> website, Historic Environment Records or HERs provide comprehensive information and evidence about the historic environment in a particular area. They are a source of information which can be used for managing

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<sup>1</sup> <https://www.english-heritage.org.uk/professional/protection/heritage-protection-reform/historic-environment-records/>

and caring for the historic environment and can be for planning and development control as well as for public benefit and educational use.

18. The potential use of a HER suggests that the information associated with that record should be considered under the provisions of the EIR.

### **Duty to make environmental information available on request**

19. Regulation 5(1) of the EIR states that –

“...a public authority that holds environmental information shall make it available on request.”

20. In this case the Council has confirmed to the Commissioner that it has provided the complainant with all the information it holds relevant to her information request.
21. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds any further recorded information, relevant to the complainant's request, other than that information already supplied.
22. 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.
23. 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.
24. The Council's submissions confirmed that it holds information relevant to the complainant's request. That information is held on the Council's Microsoft Access database and some was contained in secondary files, previously stored in a hard copy, but now within its electronic database for HER enquiries.
25. The searches undertaken to retrieve information relevant to the complainant's request included manual searches of officer emails; searches of its electronic networked folder maintained by council officers; annotated 1-2-1 agendas held by individual council officers; and briefing notes for a particular councillor.
26. Where searches of its database had been conducted the Council had used the following terms:

HER number 43860

Arnside

Arnside War Memorial

27. The Council advised the Commissioner that no information falling within the scope of the complainant's request had been deleted or destroyed.
28. It did however report that an officer, who had corresponded with the complainant in relation to this HER, had left the Council's employment in 2012 and consequently the officers' email account had been deleted. Enquiries had been made with the Council's IT Department to determine whether the officer's emails could be retrieved but it was discovered that this was not possible due to the passage of time.
29. The council informed the Commissioner that its former employee's email account was disabled on her their last working day and then the account, including all her emails were deleted one month later. The Council advised the Commissioner that this is current practice within the Council, bit it is not a formal documented policy.
30. The Commissioner asked the Council whether it was under any statutory duty to retain the information sought by the complainant. He was advised that the maintenance of the HER is not a statutory function and there is no guidance which exists on what information should be retained.
31. The Commissioner has considered the Council's representations in respect of this matter. Based on the civil standard of the 'balance of probabilities' and in the absence of any evidence to the contrary, the Commissioner has concludes that Council does not hold recorded information under the terms of the complainant's request, other than the information it has already supplied to her. The Commissioner's decision therefore is that the Council has complied with the requirements of regulation 5(1) of the EIR.

## 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 .....**

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