

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 29 October 2015

Public Authority: Bolsover District Council
Address: The Arc
High Street
Clowne
Derbyshire
S43 4JY

Decision (including any steps ordered)

1. The complainant has requested information relating to a property plan. Bolsover District Council disclosed some information and confirmed that no further relevant information was held. The complainant has disputed this.
2. The Commissioner's decision is that Bolsover District Council has disclosed all the information relevant to the request that it holds and complied with regulation 5(1) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 21 May 2015, the complainant wrote to Bolsover District Council (the "council") and requested information in the following terms:

"As the 'Property Plan' was drawn up by a 'third party' its legal accuracy and totality has not been certified by yourself, indeed the Land Registry Index map plan of 5/7/2012 or that for DY399347 (11/9/2014) do not cover the full area purported to have been transferred to Morrisons. Please certify as to the correctness of the property plan and in addition state that this shows the totality of all lands transferred. In addition, as

previously requested please provide plans of all parcels of land therein, including proof of title Eastwards from the boundary shown as plot 5 on the Land Registry plan prepared on the 5/7/2012."

5. The council responded on 15 June 2015 and disclosed information.
6. On 29 July 2015 the complainant wrote to request an internal review, identifying information which they considered had been omitted from the council's disclosures.
7. Following an internal review the council wrote to the complainant on 18 August 2015. It stated that it had disclosed all the relevant information falling within the scope of the request.

Scope of the case

8. On 4 September 2015 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner confirmed with the complainant that his investigation would consider whether the council had disclosed all the information relevant to their request.

Reasons for decision

Regulation 5 – duty to provide environmental information

10. Under regulation 5(1) of the EIR a public authority that holds environmental information shall make it available on request.
11. In this case the complainant has raised concerns that the council might not have disclosed all the relevant information it holds which falls within the scope of their request. The council maintains that it holds no additional information.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

14. To assist with this determination the Commissioner approached the council with a number of questions. The council confirmed that it has answered these queries on the assumption that the complainant considers that it holds further title deeds to those already disclosed. The questions and summaries of the council's responses are set out below.

What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?

15. The council confirmed that the request was administered by its Improvement Team in accordance with its usual processes and was passed (applicant blind) to its Legal Team (including the Land Charges section). The council explained that its request handling process is well established and that service areas know to check all information held in both electronic and hard copy forms.
16. The council confirmed that its Legal Team checked all relevant files, both electronic and hard format based on the scope of the request. It explained that the scope of the searches was checked at the time of the original request and at the internal review stage.

If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

17. The council confirmed that all potential stores / systems of data were checked, including emails, by the relevant officers who would hold such information. The council explained that this was done at the time of the initial request and at the internal review stage.

If searches included electronic data, which search terms were used?

18. The council confirmed that no records of search terms used were kept but that relevant departments were asked to make checks at the time of the initial request and the internal review. The council stated that relevant files and systems were checked for data held and Land Registry title numbers were used as search terms.

If the information were held would it be held as manual or electronic records?

19. The council confirmed that the information could be held as electronic or manual records.

Was any recorded information ever held relevant to the scope of the request but deleted or destroyed?

20. The council confirmed that no such information had been held.

What does the council's formal records management policy say about the retention and deletion of records of this type?

21. The council explained that its guidelines provide that, under Conveyancing, information should be retained permanently. It confirmed that this is in relation to the process of changing ownership of land or property (such as purchase files, sale of part title, title deeds and other records relating to freehold property – not public records). In relation to the specific information requested the council explicitly confirmed that Title Deeds DY191808, DY209763 and DY253102 were never held.

If the information is electronic data which has been deleted, might copies have been made and held in other locations?

22. The council confirmed that it does not and has never held the information which the complainant has alleged it holds. It explained that the Title Deeds in question are not relevant to the council's needs and that it has no reason or business purpose to purchase or hold them.

Are there any statutory requirements upon the council to retain the requested information?

23. The council explained that there are no legal requirements for it to hold Title Deeds that are not relevant to its functions or business needs. It confirmed that a Title Deed of land owned by the council is retained as there is a purpose, however, the Deeds which the complainant has alleged should be held do not relate to land in the council's ownership, nor has it previously been in its ownership.

Is there information held that is similar to that requested and has the council directed the complainant to such information?

24. The council confirmed that it had disclosed all the relevant information it holds. It explained that it willingly purchased Title Deed DY486997 in order for completeness of its own records. It clarified that it was under no obligation to do this, however, the Title Deed was purchased as it might be of use to the council in the long term. The council explained that DY486997 was not held at the time of the original request but its purchase coincided with the internal review – the information was then provided to the complainant.

25. In reaching his conclusions in this matter the Commissioner has considered the council's evidence and the complainant's submissions. He notes that the complainant disputes the council's position in relation to land ownership.
26. The Commissioner accepts that there is a connection between land ownership and the likelihood of information being held (the council has confirmed that it is obliged to hold Title Deeds for land that it owns), however, he has not been presented with evidence which directly contradicts the council's narrative. Furthermore, it is not the Commissioner's role to determine this substantive issue but, rather, to conclude whether, on the balance of probabilities, the council has correctly confirmed that it has disclosed all the relevant information it holds.
27. Having considered the searches conducted by the council and its explanation why the information the complainant asserts should be held is not held, the Commissioner has concluded that the council has disclosed all the relevant information that it holds.
28. The Commissioner finds that, in dealing with the request, the council complied with regulation 5(1) of the EIR.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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