

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 October 2015

Public Authority: The Planning Inspectorate
Address: 4/08 Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Decision (including any steps ordered)

1. The complainant has requested an "authenticated" copy of a report relating to the Hastings Local Plan. The Planning Inspectorate stated it had previously disclosed the identified report to the complainant and also previously confirmed that an "authenticated" version of the report, as defined by the complainant, was not held.
2. The Commissioner's decision is that The Planning Inspectorate correctly confirmed that it does not hold an "authenticated" copy of the requested information and that it 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 1 October 2015, the complainant wrote to The Planning Inspectorate (the "Inspectorate") and requested information in the following terms:

"Report on the examination into the Hastings Local Plan Development Management Plan Revised Proposed Submission Version 10 March – 22 April 2014

I would be grateful if you would provide me with the Inspectors Report written by Mr Richard E Hollox BA (Hons) Bsc (Econ) MPhil FRTPI –

Planning Inspector which can be authenticated as being derived from Mr Richard E Hollox BA (Hons) Bsc (Econ) MPhil FRTPI."

5. The Inspectorate responded on 1 October 2015 and stated that the requested "Report on the examination into the Hastings Local Plan Development" (the "Report") was publically available via the Hastings Borough Council website. The Inspectorate also confirmed that it had provided the information to the complainant on 28 September 2015 in response to their previous information request. The Inspectorate stated that it held no further "authenticated" versions of the requested report.
6. Following an internal review the Inspectorate wrote to the complainant on 5 October 2015 and reaffirmed that it had previously disclosed the requested Report to the complainant and that an "authenticated" version of the Report, as defined by the complainant, was not held.

Scope of the case

7. On 20 October 2015 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The complainant asked the Commissioner to issue a decision notice on the grounds that "...it is clear that the Inspector (sic) does not hold an 'authenticated version' and therefore have stated that they do not hold this report."

Reasons for decision

Regulation 5(1) – duty to provide environmental information

9. Regulation 5(1) of the EIR provides that a public authority which holds environmental information shall make it available on request.
10. A previous decision notice issued by the Commissioner (on 5 October 2015) related to a request made by the complainant for the following information:

"...the REPORT ON THE EXAMINATION INTO THE HASTINGS LOCAL PLAN DEVELOPMENT MANAGEMENT PLAN REVISED PROPOSED

*SUBMISSION VERSION 10 MARCH – 22 APRIL 2014 before it was edited by the HBC Officers please?*¹

11. The information requested in this previous case is the same information which is the subject of the request in this decision notice, namely, the "Report"; the only qualification being that the information should be the "authenticated" version of the Report.
12. During the course of the Commissioner's investigation into this previous complaint the complainant raised concerns that the electronic properties of the Report which had been disclosed suggested that the document had been authored by someone other than the officially designated Planning Inspector (Richard E Hollox). The complainant argued that this called into question the authenticity of the document and that, therefore, the information provided was not the true Report.
13. The Commissioner asked the Inspectorate to address this point and it duly confirmed, as reported in the Commissioner's decision notice, that the final report disclosed to the complainant was the information identified in the request. The Inspectorate further confirmed that it did not hold any further copies or versions of the disclosed information, including an "authenticated" version as defined by the complainant.
14. The Commissioner notes that the complainant has a view about the properties the requested information should have and that they have chosen to define a document's "authenticity" in these terms. However, for the purposes of the EIR, authorities are only obliged to provide information which is held. In this case, the Commissioner has previously found that the requested Report has been disclosed to the complainant. and that an "authenticated" version of the Report, as defined by the complainant is not held.
15. The Commissioner now reiterates the conclusions he set out in the decision notice issued under FER0590308 and, in relation to the complainant's request for a copy of the "authenticated" version of the Report he finds that information of this description is not held by the council.

¹ ICO reference: FER0590308; published on the ICO website here: https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432996/fer_0590308.pdf

16. The Commissioner has concluded that, in confirming that the information is not held the Inspectorate has complied with its duty under regulation 5(1) of the EIR.

Other matters

17. Although they do not form part of this decision notice the Commissioner notes the following concerns.
18. Section 50(1) of the FOIA requires the Commissioner to make a decision in relation to complaints he receives about public authorities' compliance with the FOIA and EIR when dealing with requests for information. However, under section 50(2)(c) the Commissioner has the right to refuse to make a decision if it appears to him that a particular application is frivolous or vexatious.
19. In view of the findings of this decision notice and the notice issued in relation to the complainant's previous complaint, the Commissioner has concerns that the complainant is repeatedly making requests for information with which they have either already been provided or that they have been advised is not held. If the complainant considers that the absence of an "authenticated" version of the requested Report represents a shortcoming on the part of the Inspectorate, this is a matter which they should pursue via remedies other than the EIR.
20. In future the Commissioner will consider whether it is appropriate for him to exercise his discretion under section 50(2)(c) to refuse to make a decision in relation to any complaint about a request of a similar nature from the complainant.

Right of appeal

21. 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

22. 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.
23. 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