

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

Decision notice

Date: 12 May 2016

Public Authority: Ryedale District Council
Address: Ryedale House
Malton
North Yorkshire
YO17 7HH

Decision (including any steps ordered)

1. The complainant has requested information about the ownership of two parcels of land in connection with arrangements for draining surface water from a development site.
2. The Commissioner's decision is that Ryedale District Council (the council) did not hold the information requested and that it has applied Regulation 12(4)(a) correctly.
3. The Commissioner does not require the public authority to take any steps to comply with the legislation.

Request and response

4. On 5 January 2016, the complainant wrote to the council about his concerns regarding a local property development (the development) and requested information in the following terms:

"A pipe runs from the [name and address removed] development across land adjacent to the site en route to a water course. The pipe is designed to remove waste surface water (rain). I require the name of the landowner (s) under whose land the pipe has been laid. For the avoidance of doubt I require the name/identity of the landowner (s) at the time Ryedale District Council issued written approval to the

developer authorising the start of the development, as stipulated in the Schedule Of Conditions for Appeal Ref:

APP/Y2736/A/13/2197184/Paragraph 16, ['condition 16'] viz:

'No development shall take place until full details of foul and surface water drainage and a programme for implementation have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.'

I also require a copy of the letter or email sent to [name removed] by Ryedale District Council in which Ryedale District Council issues its approval, as stipulated in Paragraph 16 above, so that development can begin."

5. The request was initially regarded as having been made under FOIA but was later recognised by the parties as proper for consideration under the EIRs.
6. The council responded to the request on 1 February 2016 saying that it did not hold the information requested about ownership of the relevant parcels of land. The complainant remained dissatisfied and asked for an internal review of that decision.
7. On 16 March 2016 the council provided the complainant with the outcome of its internal review. The council confirmed that it did not hold the information requested regarding land ownership. It also provided the complainant with a bundle of all of the relevant documents that it held including its confirmation to the developer that the requirements of condition 16 had been discharged.

Scope of the case

8. The complainant contacted the Commissioner on 7 February 2016 to complain about the way his request for information had been handled saying that, in his view, the council must hold the information requested.
9. The Commissioner considered whether the council held the information requested.

Reasons for decision

Is it environmental information?

10. At the outset of his investigation the Commissioner considered whether the requested information fell to be considered under the EIR. The Commissioner has set down below his reasoning in this matter.
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 as any information in any material form on:
 - '(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, 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 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. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question.
13. In this case the subject matter of the withheld information relates to land and advice which could determine or affect, directly or indirectly, policies or administrative decisions taken by the council.
14. The Commissioner considers that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information can be considered to be a measure affecting or likely to affect the environment or a measure designed to protect the environment. This is in accordance with the decision of the Information Tribunal in the case of Kirkaldie v IC and Thanet District Council (EA/2006/001) ("Kirkaldie").

Is environmental information held?

15. Regulation 12(4)(a) of the EIR provides that:

*“For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –
(a) it does not hold that information when an applicant’s request is received;”*

16. Where there is a dispute about 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 proof; ‘a balance of probabilities’. So that in order to determine such complaints the ICO must decide whether, on the balance of probabilities, a public authority held relevant information at the time of the information request.
17. The complainant’s 5 January 2016 request had been preceded by earlier, related requests dating back to 2014. These arose out of a proposed local property development which had been the subject of a planning enquiry.
18. Following the planning enquiry, permission for the development was granted in 2013 subject to conditions. One of these, condition 16, related to the site drainage and required the local planning authority to approve the arrangements made to satisfy condition 16. The complainant considered that condition 16 required the council to issue written approval to the developer and that, before it could do so, the council needed to know the name of the owner of any land across which drains would need to be laid. The council said that this view was misconceived and a mistaken expectation of the legal responsibilities of a local planning authority. The council added that developers usually entered into an agreement with the water company to adopt the drains once they had been constructed to an approved standard. On 1 February 2016 the council told the developer that the requirements of the planning conditions imposed, including condition 16, had been discharged.
19. The complainant provided evidence to the Commissioner that in March 2008 the then owner of site 160 had asked for it to be included in the local development framework saying that the council knew at that date who owned site 160.
20. The council confirmed that it had known who owned site 160 in 2008, 2009 and 2011. The Commissioner saw that that ownership of site 160

had not changed during that period. The council said that the complainant also held that information.

21. However the council said that it held no information about who was the land owner at the date of the information request which had been made several years later. The council told the Commissioner that it did not have an operational need to hold that information.
22. The Commissioner considered whether or not the fact that the council knew who owned site 160 between 2008 and 2011, meant that the council also knew who owned site 160 in 2016. He recognised that ownership of site 160 might have continued unchanged in the interim or it might not. He accepted the council's evidence that it did not hold any further information about the current ownership of both sites and that it was not relevant to the discharge of the council's planning function. He therefore concluded, on a balance of probabilities, that the council did not hold information about ownership of the sites at the date of the information request.
23. Regulation 12(4)(a) of the EIR is technically subject to a public interest test but the Commissioner considers conducting a test to be a futile exercise where, as here, he is satisfied, on the balance of probabilities, that the public authority did not hold the requested information at the time of the request. Therefore the Commissioner has not gone on to consider the public interest balancing test.

Right of appeal

24. 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

25. 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.
26. 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

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