Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 June 2018

Public Authority: New Forest National Park Authority
Address: Lymington Town Hall
Avenue Road
Lymington
SO41 9ZG

Decision (including any steps ordered)

1. The complainant has requested information relating to some Call for Site questionnaires and how and when these were assessed into stage 2 of the National Planning Practice Guidance (NPPG). The authority responded to the requests, providing responses to many of the questions and confirming where it considered the requested information is not held.

2. The complainant asked the Commissioner to consider two questions from the requests and to determine whether the requested information is held and if so whether it has been provided by the authority, thereby meeting its obligations under the EIR.

3. The Commissioner's decision is that the authority does hold some recorded information falling within the scope of the two questions. Towards the end of her investigation this information was disclosed to the complainant.

4. The Commissioner considers the authority did hold further recorded information at the time of the requests, which could have been provided at that time had the questions been interpreted correctly. However, the Commissioner is satisfied that on the balance of probabilities this information is no longer held and cannot therefore now be disclosed.

5. The Commissioner therefore does not require any further action to be taken. She has however recorded a breach of regulation 5(2) of the EIR, as the authority failed to provide the information it does hold within 20 working days of the receipt of the requests.

Request and response

6. This notice concerns two information requests the complainant made to the authority on 29 August 2017 and 6 October 2017. The Commissioner has only been asked to consider one question from both; the details of which can be found a little later on at paragraph 11.

7. The authority responded to the request of 29 August 2017 on 26 September 2017. It provided a response to each question, either providing the information it holds or confirming that the requested information is not held.

8. The authority responded to the request of 6 October 2017 on 17 October and 6 November 2017. Again it responded to each question, either providing the information it holds or confirming that the requested information is not held.

9. The complainant requested an internal review on 20 December 2017.

10. The authority carried out an internal review and notified the complainant of its findings on 13 February 2018. It again addressed each question and either provided the recorded information it holds or confirmed that the requested information is not held.

Scope of the case

11. The complainant contacted the Commissioner on 2 March 2018 to complain about the way his request for information had been handled.

12. On 15 March 2018 the scope of the Commissioner's investigation was established with the complainant and it was agreed that she would investigate further the authority's handling of question 6 of both requests. For clarity, these questions were worded as follows:

    " How many Call for Sites questionnaires were assessed in accordance with the National Planning Practice Guidance document into Stage 2 of the assessment, as part of the statutory National Planning Policy Framework as provided by the DCLG and following the attached land availability assessment flow chart provided in the Authority's Interim Housing Topic Paper on Page 18? Please provide a number."

"Of the 109 sites that were assessed into Stage 2 of the Summary of Site Assessment Outcomes in the Authority's Interim Housing Topic Paper dated October 2016, how many sites were assessed following the Methodology in Stage 1 and Stage 2 as set out within the National Planning Practice Guidance (NPPG) in accordance with the National Planning Policy Framework? Please provide a number."

13. The complainant confirmed that he had received confusing and differing responses to these questions and others which were closely connected. He therefore disputed he had received the appropriate response to each under the EIR and believed the authority holds recorded information falling within the scope of these questions, which has not to date been provided.

14. The Commissioner's investigation has therefore been to determine whether the authority holds recorded information falling within the scope of these two questions and if it does, what that information is and whether it has been provided to the complainant.

15. The complainant raised other concerns regarding the authority's assessment of the Call for Site questionnaires and whether the authority has followed the relevant guidance and frameworks. The Commissioner informed the complainant that she cannot consider such matters as part of this investigation, as she has no remit to do so.

Reasons for decision

16. Regulation 5(1) and (2) of the EIR states that a public authority that holds environmental information shall make it available on request. It shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.

17. This is of course subject to Part 3 of the EIR which enables a public authority to refuse to disclose environmental information requested if an exception to disclosure applies under any element of regulation 12(4) or 12(5). All exceptions listed are also subject to the public interest test and a presumption in favour of disclosure must be applied.

18. During the authority's initial handling of these requests and the Commissioner's own investigation varying and often conflicting responses were provided by the authority to both the complainant and the Commissioner herself. This confused matters and naturally resulted in the complainant questioning and disbelieving what he was being told. It also frustrated the Commissioner's investigation and made it particularly difficult to establish exactly whether recorded information is held or not.

19. It was however firmly established after many weeks of deliberation that the authority does hold some recorded information falling within the scope of the two questions; an interim paper produced by the authority in October 2016 (which had previously been disclosed to the complainant). The authority stated that this report represents a snapshot of where it was at in October 2016 in terms of the Call for Site questionnaires it had received. This confirmed which sites had been assessed and at what stage they were at, at this time. From this report it is clear that 109 sites had been assessed into Stage 2. From October 2016 to the date of the requests more Call for Site questionnaires were assessed but no physical record of when each was assessed into stage 2 of NPPG was made so it is now unable to confirm how many *more* (in addition to the 109 that can be taken from the interim paper) were assessed into stage 2 at the time of the requests.

20. The Commissioner requested the authority to issue a fresh response to the complainant which confirmed that it held the interim paper and from this it was able to say at the time that it was produced (October 2016) that the answer to both questions was 109.

21. With regards to the questionnaires that were assessed after October 2016 to the date of the requests, the Commissioner considers that had the authority interpreted the complainant's questions correctly, understood what it understands now about what recorded information does in fact fall within each question, it would have been in a position at the time it handled the requests to update the figure of 109. The authority explained that it was still in the process of considering the Call for Site questionnaires and carrying out the work it needed to do to produce its draft Local Plan. The Commissioner considers at the time of the requests it would have been possible for the authority to verify or check it records to establish how many more questionnaires it had assessed into stage 2 and added this to the 109. After all, this must have been what the authority did in or around October 2016 to produce the interim report.

22. As the authority did not interpret the questions correctly, did not identify that the interim report fell within scope, it missed the opportunity to gather the more up to date information at the time of the requests and the ability to do that *now* has been lost because it did not record the date on which each questionnaire was assessed into stage 2. The interim paper produced in October 2016 was the only snapshot that was produced by the authority during the assessment of the Call for Site Questionnaires as a whole detailing where each questionnaire was up to at that time and it made no physical record of the date when each questionnaire was assessed into stage 2 of NPPG on the assessment proforma it used, as there was no business requirement to record such detail. To be able to provide the number of additional questionnaires

that were assessed into stage 2 after the October 2016 report up to the date of the requests now, the authority would need to have recorded the date each was assessed into stage 2 in some way.

23. During her investigation the Commissioner asked the authority to provide a copy of the information it does hold for a couple of Call for Site questionnaires that were assessed after the interim report in October 2016 to satisfy herself that it is not possible now to confirm how many more were assessed into stage 2 of NPPG at the time of the requests. The assessment proformas the authority has supplied do not record when each of the examples were assessed into stage 2 of NPPG.

Commissioner's conclusion

24. It has now been firmly established that the authority holds some recorded information falling within the scope of the questions i.e. the interim report from October 2016. The authority has confirmed that it does hold this information and provided an answer to both questions to the complainant from that.

25. The Commissioner considers on the balance of probabilities that the authority could have verified and therefore established how many more questionnaires had been assessed into stage 2 of NPPG (i.e. in addition to the 109 that can be taken from the interim report) at the time of the requests. However, because of the passage of time and the fact that the authority did not record the date when each was assessed into stage 2, the authority has lost the ability to provide that additional information now.

26. The Commissioner cannot compel a public authority to provide information it no longer holds and as the authority has now provided what it does still hold to the complainant, she does not require any further action to be taken.

Procedural breaches

27. As it was established that the authority holds recorded information falling within the scope of the questions and what it held was not provided until 23 May 2018 for question 2 and 5 June 2018 for question 1, the Commissioner has recorded a breach of regulation 5(2) of the EIR. This is because the authority failed to provide information to which the complainant was entitled within 20 working days of the receipt of the requests.

Right of appeal

28. 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

29. 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.

30. 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:

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF