

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

**Date:** 24 September 2018

**Public Authority:** Ministry of Housing, Communities and Local Government

**Address:** 2 Marsham Street  
London  
SW1P 4DF

**Decision (including any steps ordered)**

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1. The complainant has requested from the Ministry of Housing, Communities and Local Government (MHCLG)<sup>1</sup> information relating to the advice given to Local Planning Authorities (LPAs) when issuing planning permissions. MHCLG provided some information and stated that other information was not held
2. The Commissioner's decision is that, on the balance of probabilities, the MHCLG does not hold any additional information relevant to the request.
3. The Commissioner does not require any steps to be taken.

**Request and response**

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4. On 14 October 2017, the complainant wrote to MHCLG (then DCLG) and requested information in the following terms:

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<sup>1</sup> At the time of the request, Department for Communities and Local Government. For the purpose of this Decision Notice, the Commissioner will use the acronym MHCLG, except when quoting parts of the original correspondence.

- "1. When a LPA grants planning permission does a legal contract then exist between the LPA and the developer?*
  - 2. Any conditions set out in the schedule of conditions are themselves a part of that document and should be complied with in full unless changes are mutually agreed?*
  - 3. Any 'condition' containing the word SHALL is a mandatory action part of the developer?*
  - 4. Please supply a copy (hard) of the MODEL document use by LPA to issue approval notices.*
  - 5. Please state which sections/paragraphs in the T&CP Act to which the granting of planning approval refers and the legal obligations on the developer?*
  - 6. If the developer fails to comply with any of the conditions what legal avenues are available to ensure compliance?"*
5. MHCLG responded on 20 November 2017. In relation to question 5, it stated that it does not hold *"a standard central Government-issued template for decision notices."* Considering the way the rest of the questions were formulated, MHCLG provided an aggregated response in form of general guidance because it considered them to be requests for legal advice rather than valid information requests.
  6. Remaining dissatisfied with the response, on 5 March 2018, the complainant requested from MHCLG to conduct an internal review.
  7. Following an internal review the MHCLG wrote to the complainant on 22 March 2018. It maintained the original position.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 17 April 2018 to complain about the way his request for information had been handled.
9. In the course of her correspondence with the complainant, the Commissioner advised him that, for the purpose of the FOIA, she can only consider question 4 as a valid request for recorded information.
10. In addition, the Commissioner considers that as the requested information relates to planning matters, the requested information is likely to fall within the EIR. Therefore, she considers it appropriate to consider the request under that access regime.

11. The Commissioner's investigation has focussed on whether MHCLG has complied with regulation 5(1) of the EIR, when it stated that, at the time of the request, it did not hold any further information within the scope of the request, more precisely whether MHCLG held information in relation to question 4.

## **Reasons for decision**

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### **Is the requested information related to environment?**

12. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR.
13. Under regulation 2(1)(c), information on any measure that will affect, or be likely to affect, the elements of the environment referred to in 2(1)(a) or the environmental factors referred to in 2(1)(b) will be environmental information. In the present case, the requested information relates to enforcement of Town and Country Planning Act 1990 (T&CP Act). The planning process and enforcement actions relating to it are clearly measures that may affect several of the environmental elements and factors listed in regulations 2(1)(a) and (b). The Commissioner therefore considers it appropriate to consider the requests as seeking environmental information under the terms of the EIR.

### **Regulation 5(1) - Information held/ not held**

14. Regulation 5(1) of the EIR states that "*...a public authority that holds environmental information shall make it available on request.*"
15. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

### ***The complainant's position***

16. The complainant considers that MHCLG is the responsible authority to provide the information that he requested, taking into account that it is responsible for ensuring that T&CP Act is properly enforced.

17. In the course of correspondence with the Commissioner, the complainant stated *"DCLG as custodians of the Town and Country Planning Act should have had no problem in responding in full to the 6 questions raised as they would be employing legal personnel able to answer in full"*

***MHCLG's position***

18. In its response to the questions included in the Commissioner's letter, MHCLG confirmed that it does not hold the requested information.
19. MHCLG explained that *"there is no standard central Government issued template for decision notices. The requirements for decision notice are set out in Article 35 of the Town and Country Planning (Development Management Procedure) Order 2015"*. It provided a link from where this information can be accessed. MHCLG confirmed that this information was provided to the complainant.
20. Further, MHCLG stated that LPAs may have produced their own model documents or templates for planning decision or approval notices. It also confirmed that the complainant was advised to contact relevant local authorities to check whether they hold the information requested.
21. MHCLG explained that in the initial phase of dealing with the request, due to the nature of their work the officials from the 'Planning Application Process' area were involved. Subsequently, in the internal review stage, they were asked further questions in order to ensure that all necessary searches have been conducted.
22. In response to the Commissioner's request, MHCLG *"policy officers looked through earlier versions of the Development Management Procedure Order and have found no reference to a model document."*
23. In addition, MHCLG stated that it publishes template documents on a dedicated space on its website<sup>2</sup>. However *"there are no equivalent templates for planning decisions."* LPAs are referred to the requirements in the 2015 Order, mentioned above in paragraph 19.
24. MHCLG explained that it would expect the material to be held electronically. However the conducted searches did not indicate that a document that would fit in the complainant's description appears to be held.

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<sup>2</sup> <https://www.gov.uk/government/publications/planning-application-forms-templatesfor-local-planning-authorities>

25. Lastly, MHCLG stated that there is no business purpose or statutory requirements that would require it to hold a model document of template to be used by LPAs to issue approval notices.

***The Commissioner's view***

26. The Commissioner has reviewed the copies of the responses that MHCLG has provided to the complainant and the correspondence it had in the course of handling the complainant's requests.
27. The Commissioner has also considered the complainant's position and the arguments presented in its support. She understands the complainant's disappointment at not being given the clarification he considers he is entitled to receive. Nevertheless, the Commissioner reiterates that under the EIR, public authorities are not obliged to provide explanations and/or clarifications in response to queries raised by requesters. The provisions of the EIR are only concerned with the recorded information which is actually held by a public authority at the time it receives a request and there is no obligation for the public authority to create information in order to respond to a request.
28. In this case, the Commissioner considers the Council's position to be both plausible and persuasive and she is satisfied that MHCLG, on the balance of probabilities, does not hold the information which the complainant seeks. The Commissioner therefore finds that MHCLG has complied with its obligations under regulation 5(1) of the EIR.

## Right of appeal

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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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**