

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 October 2018

Public Authority: Derry City and Strabane District Council

Address: foi@derrystrabane.com

Decision (including any steps ordered)

1. The complainant has requested information from Derry City and Strabane District Council ("the Council") regarding a former workhouse graveyard in Derry. The Council provided the complainant with some information in relation to her request and stated that it does not hold any further recorded information within the scope of the complainant's request.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold any additional information relevant to the complainant's request.
3. Therefore the Commissioner requires no steps to be taken.

Request and response

4. The complainant wrote to the Council and requested information in the following terms:
 1. Do any remains exist in the workhouse graveyard Derry?
 2. If so, are any of them for infants graves?
 3. If so, is there a list of those who are buried at the workhouse cemetery?

5. The Council responded to the complainant on 23 April 2018 stating that it does not hold any historical records in relation to the complainant's request.
6. The complainant requested an internal review of the Council's handling of her request, the result of which was provided to her on 30 May 2018. The reviewer provided information to the complainant in response to the first part of her request, stating that, to the best of the Council's knowledge, all human remains had been exhumed from the former workhouse graveyard, however he stated that the Council does not hold information in relation to parts 2 and 3 of the complainant's request.

Scope of the case

7. The complainant contacted the Commissioner on 1 June 2018 to complain about the way her request for information had been handled.
8. The Commissioner wrote to the Council seeking its detailed submissions on 5 July 2018. The Council responded to the Commissioner on 23 July 2018, providing its submissions as to it not holding any recorded information within the scope of the complainant's requests.
9. The Commissioner has considered whether the Council has complied with regulation 5 (1) of the FOIA.

Reasons for decision

Regulation 5 – duty to provide environmental information

10. Under regulation 5(1) of the EIR public authorities have a general duty to make environmental information available when it is requested. When the information is not held, public authorities should issue a refusal notice, in accordance with regulation 14 that cites the exception under regulation 12(4)(a) of the EIR. This exception applies when information is not held.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

12. The Commissioner wrote to the Council for its explanation of the efforts made by it to locate information falling within the scope of the complainant's requests. The Commissioner's questions were focused on the Council's searches conducted in relation to the complainant's request, and whether any of the information falling within the scope of the requests was held at one time but either deleted or destroyed. The Council provided the Commissioner with a copy of the Certificate of Clearance that was issued by legacy Derry City Council on 15 July 1996 in relation to the former workhouse, stating that all human remains had been removed from the workhouse. Therefore, the Council has no knowledge of any human remains existing on the site.
13. The Council informed the Commissioner that its Environmental Health Service of the Council is the lead service that deals with exhumation requests from landowners and/or applicants. The Council checked its file in relation to how the request for exhumations was processed, including communication with the then Department for the Environment, the landowner and the company that carried out the exhumations on behalf of the landowner/applicant. In addition, following the complainant's request checks were made with the Council's Museums Service and the Cemeteries Service to ascertain if any archive files existed in relation to the matter. This search did not result in any available information.
14. The Council informed the Commissioner that, if such information were held, it would be held both electronically and manually. It also informed the Commissioner that there is no statutory requirement under the Burial Grounds Regulations (Northern Ireland) 1992 to maintain a public register or hold the information requested except in relation to burial grounds owned by Council. There is no requirement in relation to the keeping of records of exhumations from privately owned land.
15. Whilst the Commissioner recognises that the complainant does not consider that the Council has fulfilled the request, the Council has provided a clear explanation of the searches that underlay its response. No evidence is available to the Commissioner which would indicate that the Council's searches were insufficient, or that it holds recorded information falling within the scope of the requests.
16. In light of the above, the Commissioner is, on the balance of probabilities, satisfied that the Council identified all information it holds that falls within the scope of the complainant's request. The Commissioner's decision is, therefore, that the Council has complied with regulation 5(1) of the EIR.

Right of appeal

17. 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

18. 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.
19. 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

Deirdre Collins
Senior Case Officer
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Wycliffe House
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SK9 5AF