

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

Decision notice

Date: 6 April 2020

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

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested a variety of information from the Ministry of Housing, Communities and Local Government. The information which the complainant seeks relates to a site known as Speckled Wood. On receipt of the complainant's request, the MHCLG considered it necessary to seek clarification from the complainant as to the specific information he requires. After being given some clarification, the Department provided the complainant with the some of the information or it informed him that certain pieces of information were not held. Additionally, the MHCLG explained why it did not hold certain pieces of information.
2. The Commissioner's decision is that the MHCLG responses to the complainant have complied with Regulation 5(1) of the EIR. The Commissioner has also decided that it was reasonable for the MHCLG to seek clarification from the complainant with regards to his request and by doing so it has satisfied the duty imposed by Regulations 9(1) and 9(2) of the EIR.
3. No further action is required in this matter.

Request and response

4. On 20 July 2019, the complainant wrote to the MHCLG and submitted a request for recorded information. The terms of the complainant's request are:

Part 1: I understand the MHCLG has been in communication with PINS, HBC and the developer to give direction to break ground 23rd July 2019 Following receipt of hereafter known as 'DHL Petition' (<https://www.dhl.com/content/g0/en/express/tracking.shtml?AWB=3542395102&brand=DHL>). Please provide all communication with this parties (sic) by way of telephone notes, letters and email, fax and DX? Please confirm deny any said direction given?

Part 2: I understand that MHCLG has been previously advised by PINS Customer Assurance Team Angela Lewis-Jones that PINS is not the right authority to deal with this matter. Please provide this correspondence telephone note, email or DX in respect of this statement?

Part 3: Please provide and decision notice the office of MHCLG executed up (sic) receiving said DHL delivered petition including notes of PINTS as to whether you agreed with previous ruling to condemn as unsuitable all development of the Speckled Wood Estate as detailed in map TN35 AL 218253 LR and GB179_21_1 and asset prioritizing document.

Part 4: Please provide details of the date that the office of the MHCLG have had first full sight of said DHL Petition or any port therein?

Part 5: Please provide detail of the date that the office of the MHCLG have had full sight of ESRO 18/34 pages 13, 14, 15? Please provide full contents therein in respect of paragraph containing the words "condemned as unsuitable"?

Part 6 Please provide the legal position held in House of Lords library in respect to Workhouse on this site from around 24th May 1888."

5. The complainant advised the MHCLG that he had lodged the following documents with the petition referred to in his request:

- 1) FOIR 20th July 2019 part 1.
- 2) FOIR 20th July 2019 part 2.
- 3) 2016-07-16 - Email requesting answers
- 4) 2019-07-16 Letter / Petition to Rt Hon James Brokenshire (Courier 3542395102) received 11:04 16 July 2019
 - i) 2019-06-25 Martin Newbold - Article High Level Fraud Re FE0647813
 - ii) 2019-05- Asset Prioritizing document compressed
 - iii) 2019-05-31- Letter to RT Hon James Brokenshire SF 5356 9852 4GB.
 - iv) scanned_ responses_merged_compressed-449

6. On 23 July 2019, the MHCLG wrote to the complainant to ask him to clarify his request.
7. On 28 August 2019, the complainant wrote to the MHCLG and again submitted the same request he had made on 20 July.
8. On 27 September 2019, the MHCLG re-sent the complainant its email asking him to clarify his request.
9. The complainant responded to the MHCLG's email later the same day and provided the following clarification:

"Firstly your correspondence 4350660 refers to material in the public domain. For clarification:

1) ESRO 18/34 refers to East Sussex Register Office at the [keep.info](https://www.thekeep.info/collections/getrecord/GB179_R_C_18_34) :
https://www.thekeep.info/collections/getrecord/GB179_R_C_18_34

2) Decision notice refers to the fact that the MHCLG when it received a Petition sent by DHL3542395102 received by MHCLG 16th July, 2019 at 11:04:16 A Petition to the MHCLG requires the MHCLG to issue a 'Decision Notice' publishing it on MHCLG website.

3) Work house refers to a building on this site
<http://www.workhouses.org.uk/Hastings/>"

11. On 2 October the Information Commissioner's Office wrote to the MHCLG asking it to revisit the complainant's request and to send the Commissioner a copy of any response it makes to him.
12. Also on 2 October, the complainant re-sent the MHCLG his request.
13. On 10 October 2019, the MHCLG wrote to the complainant to again ask him for clarification of his request. The MHCLG asked the complainant the following questions:

"Part 1: Are you asking for copies of correspondence between MHCLG, Planning Inspectorate and the HBC relating to Speckled Wood? Can I please have a date range for the documentation you are seeking?

Part 2: Are you asking for copies of correspondence between PINS and the Department with relation to Speckled Wood? Can I please have a date range for the documentation you are seeking?

Part 3: The Department only issues decisions on planning matters which are before the Secretary of State. The majority of planning decisions

are made by the local planning authority. Are you requesting copies of any decision relating to land at Speckled Wood? Can I please have a date range for the documentation you are seeking?

Part 4: Can I please have a date range for the period you are requesting such searches to be made?"

Part 5: Would you please clarify what is meant by ESRO 18/34? Can I please have a date range for the documentation you are seeking?

Part 6: MHCLG is unable to provide legal advice. Would you please clarify exactly which document held by MHCLG you are seeking?

14. The complainant wrote to the MHCLG on 10 October to provide the following clarification of his request:

Part 1: Date range July ...October 2019. I am asking for information in this part to provide all communication that occurred with parties as directed in part 1 in respect to DHL Petition I find your response sadly pedantic.

Part 2: Date range July ...October 2019 again this is a different mixed request as detailed in PART 2

Part 3: July ...October 2019 as per Part 3 The department is supposed to act in accordance with any petition and provide a public response on its website promptly. It is not evident a response was published here therefore I am asking for it to be provided in respect to petition which you have answered less petitioner response numbers.

Part 4: October 2019 as per Part 4

Part 5: I have already provided you a response to this question 27 Sep 2019, 17:13 (13 days ago):

Firstly, your correspondence 4350660 refers to material in the public domain. For clarification:

- 1) ESRO 18/34 refers to East Sussex Register Office at the Keep.info : https://www.thekeep.info/collections/getrecord/GB179_R_C_18_34
- 2) Decision notice refers to the fact that the MHCLG when it received a Petition sent by DHL3542395102 received by MHCLG 16th July 2019 at 11:04:16 A Petition to the MHCLG requires the MHCLG to issue a 'Decision Notice' publishing it on MHCLG website.
- 3) Workhouse refers to a building on this site <http://www.workhouses.org.uk/Hastings/>

In an earlier response in an attempt to be helpful I would suggest you look in the National Archive or at the attached scan. It may also be helpful that you as a researcher in the House of Lords to attempt to locate this decision in respect to the House of Lords.

Part 6: You are quite aware I am not asking of legal advice, but an act or decision made seeking a decision (or report) signed off by the President the Local Government Board its Architect (Mr. P Tree) and District Inspector., at Whitehall made here in this position of trust and honour by Lord Charles Richie or Honourable Henry Fowler MP which also fits within this timeline[i] circa 24th May 1888 relating to White Hall Sussex and the Work House in Hastings known as the Hastings Union between 1896 and 1898 held by the House of Lords Library. Secondly I point you to the Wikipedia page https://en.wikipedia.org/wiki/President_of_the_Local_Government_Board, which seems informative and to confirm the time line for Rt. Hon Charles Richie.

It is noted from a letter in the Hastings & St Leonard's Observer dated 9th October 1886 from TF Cashin that there was a meeting in Royal Concert Hall, Warrior Square called in regard to this land at Cackle Street and the Workhouse. TF Cashin allegedly wrote in his letter "Halton, 7th October 1886" the following: "The power to compel the Guardians of a Union to erect a workhouse on the block or on any other system that condemns itself to the fancy at permanent officials who know nothing about life at the Workhouse, as an assistant master that they may like, in twelve months, acquire more knowledge, than , notwithstanding , the plenitude of their wisdom, they present possess is -- not vested in the Government Board ". This said then as this written statement 9th October 1886 by alleged TF CASHIN would expand the fact that the decision (or Report) was not made by the Government Board until after 1886. You should also note that from the ESRO 18/34 pages 13,14,15[i]. In which I understand it is written "The site adjacent to the present Building has been personally inspected by the Right Honourable Board its Architect, and the District Inspector and condemned as unsuitable, and when it was proposed as an alternative site on the 3rd instant it was rejected..." that this said decision (or Report could only have been created 1886-1892!)

I therefore served information request for the decision (or report) as made by the Right Honourable Board its Architect, and the District Inspector made between 1866 and 24th May 1898[1] by the Right Honourable the President Local Government Board, Its Architect & District Inspector, as part of Whitehall Sussex. This decision then most likely was by either the Right Honourable

Charles Richie MP or latterly the Right Honourable Henry Fowler MP in respect to a matter ESRO 18/34 pages 13,14,15[i]. In which I understand it is written "The site adjacent to the present Building has been personally inspected by the Right Honourable Board its Architect, and the District Inspector and condemned as unsuitable, and when it was proposed as an alternative site on the 3rd instant it was rejected..."

15. On 24 October 2019, the MHCLG wrote to the complainant advising him that, "I regret that at present I am unable to proceed with your request unless you clarify exactly what recorded information you are seeking from the Ministry of Housing Communities and Local Government together with precise dates providing the time frame you are interested in. I should add that it is most unlikely that we would hold information going back to 1888."
16. The complainant responded to the MHCLG's request later the same day. He advised the Department that, "The Government seems to have signed a Memorandum of Understanding building, houses on part of this lease site 19th March 2013 as part of this lease area as detailed in map / plan TN35 AL 218253 LR AND GB179_EW9_21_1 and Asset Prioritizing Document. Therefore, this information must have been available to you in consideration of the position to build housing on leasehold land. Clearly you have been asked whether you consulted this document? The complainant also provided the MHCLG with links to various documents on the Hastings Council Planning Portal."
17. On 13 November 2019, the MHCLG responded to the complainant's clarified request. The MHCLG's response to each part of the complainant's request was:

Part 1: The [...] information is not held by the Ministry of Housing Communities and Local Government.

Part 2: The [...] information is not held by the Ministry of Housing Communities and Local Government.

Part 3: With regarding to publishing petitions and campaign correspondence, the Department publishes responses to petitions and campaigns that have been sent directly by post or email to the Ministry of Housing, Communities and Local Government. As we receive a large volume of correspondence in connection with campaigns, the Department does not always send individual responses in reply. When a petition or campaign correspondence is sent, applicants must make it clear if they do not want details of the petition or campaign, or our

response, to be published online (even without names and addresses of the petitioners). There is no timeframe for publication of responses.

The Ministry of Housing Communities and Local Government does not hold any other information about Speckled Wood from July to October 2019 other than the petition in question.

Part 4: The Ministry of Housing Communities and Local Government received the petition on 16 July 2019.

Part 5: I'm afraid I am still not sure exactly what recorded information is being sought here and suggest you submit a new request detailing in precise terms what recorded information you are seeking. It might also be helpful if I explain that the Secretary of State can consider requests for planning applications to be called in for public inquiry and his own decision. Such requests however can only be considered when there is a planning application being considered by the local planning authority. It would be premature for the Secretary of State to consider a request to call-in when there is no application. There have been no requests to call-in a planning application on land at Speckled Wood before the Secretary of State. Finally, we do not hold details going back to 1888, nor would there be any reason for us to do so. As explained previously the Department is unable to provide legal advice and interpretation of the law is a matter for the courts."

Scope of the case

18. The complainant contacted the Commissioner on 8 August 2019 to complain about the way his request for information had been handled.
19. The Commissioner advised the complainant that she would investigate whether the MHCLG has handled his request in accordance with the FOIA, and specifically whether the MHCLG holds any of the information the complainant has asked for in his clarified request. Additionally, the Commissioner advised the complainant that she would consider whether the MHCLG has provided him with proper advice and assistance in respect of your clarified request under section 16 of the FOIA.

Background information

20. The MHCLG has provided the Commissioner with information which it considers is relevant to her consideration of this complaint. This information relates to the role of the Secretary of State in respect of planning matters.

21. The Secretary of State has a quasi-judicial role in the planning process, which requires him, under the Town and Country Planning Act 1990, to consider requests for planning applications to be called-in for public inquiry and his own decision.
22. Anyone may make a request for call-in to the Secretary of State and all requests are considered against the Secretary of State's call-in policy. Such requests can only be considered when there is a live planning application which is being considered by a local planning authority.
23. It would be premature for the Secretary of State to consider a request to call-in when there is no application.
24. In this case, there have been no requests made to call-in a planning application on land at Speckled Wood. Likewise, there are no current planning applications awaiting a decision on the Hastings Council website.
25. In 2018, the Department replied to correspondence from 'Friends of Speckled Wood', advising them to contact the Local Planning Authority monitoring officer, and the Local Government Ombudsman, in relation to their concerns about Hastings Borough Council.

Reasons for decision

26. The MHCLG has informed the Commissioner that it dealt with the complainant's request under the provisions of the EIR rather than those of the FOIA. The MHCLG explained that it chose this information access regime because the request involved environmental matters.
27. On the basis of the terms used by the complainant in his request, the fact that the focus of the request is land known as Speckled Wood, and the request relates to a planning matter, the Commissioner agrees with the MHCLG's decision to respond to the complainant's request under the EIR.

Regulation 5(1) – duty to provide environmental information

28. Under Regulation 5(1) of the EIR a public authority is required to 'make available on request' information which is environmental information.
29. To determine whether the MHCLG has now complied with Regulation 5(1), the Commissioner applies the civil test. This test requires her to consider the question in terms of 'the balance of probabilities': it is the

test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.

30. The MHCLG has described the searches it has made to determine whether it holds information within the scope of the complainant's request. It has also explained why those searches are appropriate and why they would likely to retrieve any relevant information if it was held.
31. The MHCLG has told the Commissioner that its Information Management team searched its catalogue of physical files and the department's library catalogue for reference to the documents detailed in the complainant's request. Additional searches were made for any documentation more broadly relating to Speckled Wood.
32. The MHCLG's Information Management team is responsible for archiving the Department's official files and for handling those under the Public Records legislation. The Department's library is managed by this team and holds a collection of published material relevant to the work of the Department.
33. Information Management team staff searched its catalogues of physical files on its Livelink and RSWeb and also the library catalogue which is hosted on KOHA - a library database.
34. The Department also liaised with its Planning Casework Unit who administer the Secretary of State's role in the planning process.
35. The search terms used in the MHCLG's searches included the following terms, or combinations of those terms:

Work House on the Site of Speckled Wood, May 1888, Work House, Workhouse, Speckled, Site, ESRO, 1888, East Sussex Records Office, Sussex Records Office and Records Office. The MHCLG's searches yielded no results.
36. Additionally, the MHCLG carried out a search for "Minutes of Board of Guardians of Hastings Union" on its SharePoint team sites. This phrase was taken from the title of the record ESRO R/C/18/34¹. Again, this search yielded no result.
37. All of the MHCLG's computers are networked and information held on those computers is stored in the cloud. Where the Department's records

¹ <https://discovery.nationalarchives.gov.uk/details/r/ce646c46-5cd1-4f27-9fb8-1b59a97ec74f>

are held in both physical and electronic form or where older material is solely in physical form, the Information Management team maintain an electronic catalogue of those physical files.

38. The MHCLG has advised the Commissioner that it holds no record of it ever holding the information requested by the complainant and that it has no record of the destruction of any documentation regarding the Speckled Wood site.
39. The MHCLG says that it holds metadata for registered physical files that have been destroyed. This metadata would include the title, the date of destruction and the retention assigned to each physical file.
40. The MHCLG has advised the Commissioner that its metadata records were not searched for this request because the ESRO document and the 1888 document are not documents produced by MHCLG or its predecessors and they are less likely to have been retained as part of the official record.
41. The MHCLG's position is substantiated by the fact that the 1888 document predates the Public Records Act 1958. Prior to 1958 there would have been no requirement for the Department to retain a record of the destruction of this information.
42. The MHCLG says that it currently not able to retain information relating to the deletion or destruction of digital files. It is currently reviewing the Department's policy to address this issue and it will be looking at viable approaches to generating metadata in respect of digital records in the future. The MHCLG's records and information management policy is available at:

<https://www.gov.uk/government/publications/mhclg-records-and-information-management-policy>
43. The MHCLG emphasises that it does not keep most information indefinitely. It says, "Records will be kept for as long as there is a business or legislative need to do so. This will vary from 2 years up to 20 years. Legal authority is required for the department to hold records for longer than 20 years".
44. The Department's record retention schedule shows the general retention periods for each subject. The retention schedule is based on detailed guidance issued by The National Archives, with each business area being responsible for agreeing the retention period of all its records by consulting with the Department's Information Management team.

45. Where individual business areas are unsure of the retention period of a record, or where there is no clear owner to advise, the default retention period will be 8 years.
46. The Commissioner is advised that the MHCLG's SharePoint system is the official repository for the Department's current physical data. Most legacy digital information is held in a separate system, which was the official repository prior to the SharePoint rollout.
47. The MHCLG says that it does not have the ability to search the whole of the legacy data it holds. This is due to the significant volume of that information which results in searches being timed out. In order to effectively search for the information requested by the complainant, the MHCLG would require a clear indication of which business areas' drives would be most likely to hold this information.
48. When asked whether the MHCLG had a business purpose to hold the information requested by the complainant at parts 5 and 6 of his request, the Department told the Commissioner that it had no statutory requirement to retain that information.
49. The Commissioner also asked the MHCLG whether any of the information relevant to part 6 of the complainant's request, which may be held in the House of Lords Library, would also be held by the MHCLG.
50. The MHCLG responded to the Commissioner's request saying, "We found no record of MHCLG holding any information pertaining to the 1888 document. [The complainant] could try contacting the House of Lords for a copy of the document mentioned in part 6 of this request. An enquiry would need to be made through the Parliamentary Archives, further details of their services are available at <https://archives.parliament.uk/>. It is also possible that The National Archives may hold a copy of the document referred to".
51. The Commissioner has considered the response made by the MHCLG to her enquiry. She is satisfied on the balance of probability that, with the exception of the date when the Department received the petition referred to by the complainant, the MHCLG does not hold the information which the complainant has requested.
52. The Commissioner notes that MHCLG was not given the opportunity to carry out an internal review of its handling of the complainant's request and his clarified request before she initiated her investigation. Nevertheless, she is content that the MHCLG's response to the complainant of 13 November 2019 properly complied with Regulation 5(1) of the EIR.

Regulation 9 – Duty to provide advice and assistance

53. Regulation 9(1) of the EIR places a duty on public authorities to provide advice and assistance to anyone making a request for environmental information, so far as it is reasonable to expect the authority to do so.
54. Under Regulation 9(2), where a public authority decides that a request has been formulated in too general a manner, the authority is permitted to ask the requester to provide more particulars in relation to his request.
55. The MHCLG asserts that it has properly met its obligations under the EIR. It says, "We had attempted to seek clarification but we were unclear exactly what recorded information was being sought by the applicant".
56. The MHCLG discussed the complainant's request with one of the Commissioner's officers and it subsequently attempted to answer the complainant's request when it was still unsure as to what specific information the complainant is seeking.
57. The Commissioner has considered the complainant's request, the clarification of his request and the responses and explanations given to the complainant by the MHCLG.
58. The Commissioner considers that it was reasonable for the MHCLG to seek clarification from the complainant regarding the specific information which he is seeking and to have asked him to provide date ranges for some of the information which he has asked for. On balance, the Commissioner has decided that the MHCLG has satisfied its duty under Regulations 9(1) and 9(2).
59. The MHCLG has advised the Commissioner that it would be happy to consider a further request from the complainant if he can set out exactly what information he requires. Accepting that there is no requirement under the Regulations for an applicant to say why they are requesting information, the MGCLG suggests that, if the complainant was to explain why he is seeking the information, it would assist the Department to understand what information he requires and to conduct specific searches for that information.

Right of appeal

60. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

61. 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.
62. 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
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Wycliffe House
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SK9 5AF