

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

Decision notice

Date: 2 July 2020

Public Authority: Clarion Housing Group
Address: Level 6
6 More London Place
Tooley Street
London
SE1 2DA

Decision (including any steps ordered)

1. The complainant has requested various policies from Clarion Housing Group ("CHG"), citing both the FOIA and the EIR. The Commissioner's decision is that the request would fall within the remit of the FOIA rather than the EIR. However, she also finds that CHG is not a public authority for the purposes of the FOIA and it was not therefore obliged to respond to the request. No steps are required.

Background

2. The Commissioner laid a report before Parliament in January 2019 calling for an update to the FOIA and the EIR to include organisations providing a public function.
3. The report is available via the Commissioner's website¹ and includes commentary on housing associations.

¹ <https://ico.org.uk/about-the-ico/what-we-do/outsourcing-oversight/>

Request and response

4. On 4 December 2019, the complainant wrote to CHG and requested information in the following terms:

"My name is [redacted] and I am tenant of Clarion property at my current address [address redacted]. Please supply the details all of the data and policy held regarding Clarion's: Disability Policy in relation to tenants and Clarion Housing: This may include: Disabled coordinator/ team contact liaison person for tenants with Disabilities; Disability Policy in relation to The Equality Act 2010 and disability reasonable adjustments requests from tenant with disabilities; Disability Policy and guidelines Disabled Tenants receiving specific communication adjustments in relation to accessing information equally and fairly as per the Equality Act 2010; and Disability Reasonable adjustment requirements in relation to Health & Safety; Health & Safety Policy in relation to Disabled tenants; Disability Policy in relation to Decant forms and decant form Guidance in relation to Disabled self reporting of disability need; All information in relation to Staff training in Disability Social Model of Disability Awareness 2019 training in line with carrying out Health Assessments with Disabled tenants: Staff training in Data Protection and Confidentiality; Staff training in The Equality Act 2010; Staff training in relation to Disability Policy in all aspects; Policy and information available to the public and staff, specifically in relation to tenants rights to not disclose Disability detail to landlord in line with current legislation DDA.

As Per The Equality Act 2010 I request a readable digital format preferably in .doc format to enable me to make reasonable adjustments and read information and sent ONLY via email. Please can you acknowledge this Freedom of Information request and or Environment Information request on receipt via email. Please contact me if any issues arise in sending the info in .doc format or via email".

5. On 4 December 2019, CHG copied the complainant in to an email forwarding the request to its customer services and advising: *"This is not a complaint and not within my remit to investigate"*.
6. On 16 December 2019, having received no further correspondence, the complainant chased a response. CHG responded on the same day advising that the complaint would again be forwarded to its customer services.
7. No further response has been received under the FOIA or the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 15 January 2020 to complain about the way their request for information had been handled. The complainant advised that:

"I have been requesting the same info from Clarion since April 2019, they continue to refuse to supply this info, so I sent 4th Dec FOIR, i chased this up, they have ignored me".

9. On 28 January 2020, the Commissioner advised the complainant that CHG was not a public authority and that she was therefore unable to require it to respond to the request. The Commissioner advised that the FOIA only applied to those bodies defined as 'public authorities' in section 3 of the FOIA and that: *"This organisation is not a public authority as defined by the Act and therefore does not have a duty to respond to information requests. For this reason the Information Commissioner cannot proceed with your complaint and has closed your case"*.

10. The complainant responded asking: *"Can you confirm what the law is in relation to EIR?"*

11. On 29 January 2020, the Commissioner advised the complainant as follows:

"Further to our telephone conversation, I write with reference to the complaint you have submitted about the above organisation's compliance with the Environmental Information Regulations (EIR).

The definition of 'public authority' is given in Regulation 2 of the EIR. It states that "public authority" means the vast majority of public authorities as defined in Section 3 of the Freedom of Information Act, any organisation or person carrying out a public administration function, or any organisation or person that is under the control of a public authority and:

- (i) has public responsibilities relating to the environment;*
- (ii) exercises functions of a public nature relating to the environment; or*
- (iii) provides public services relating to the environment.*

This organisation is not a public authority as defined by Regulation 2 of the EIR and, therefore, does not have a duty to respond to information requests. For this reason the Information Commissioner is unable to proceed with your complaint and has closed your case.

... More importantly, however, is the current Tribunal view is that

housing associations are not public authorities even for the purposes of the EIR. Please see the link below regarding a recent Tribunal ruling:

[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2376/Poplar%20Housing%20Association%20&%20Regeneration%20Community%20Association%20\(HARCA\)%20EA-2018-0199%20\(20.02.19\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2376/Poplar%20Housing%20Association%20&%20Regeneration%20Community%20Association%20(HARCA)%20EA-2018-0199%20(20.02.19).pdf)

12. On 29 January 2020, the complainant confirmed their grounds of complaint as follows:

"The definition of 'public authority' is given in Regulation 2 of the EIR. It states that "public authority" means the vast majority of public authorities as defined in Section 3 of the Freedom of Information Act, any organisation or person carrying out a public administration function, or any organisation or person that is under the control of a public authority and:

- (i) has public responsibilities relating to the environment;*
- (ii) exercises functions of a public nature relating to the environment; or*
- (iii) provides public services relating to the environment.*

Clarion Housing do in fact carrying out a public administration function and have responsibilities relating to (i), (ii) and (iii)

This response does not address Health and Safety matters in relation to tenants and environment nor any tenant with disability related matters as per The Equality Act 2010".

13. The Commissioner will consider whether or not CHG is a public authority below. She does not have any jurisdiction to consider any issues relating to the Equality Act or to tenant health and safety.

Reasons for decision

FOIA or EIR?

14. The Commissioner will decide which access regime to consider when determining the outcome of a complaint, based on the wording of the information request and the type of information being requested.
15. Information is 'environmental information' and falls to be considered under the EIR if it meets the definition set out in regulation 2 of the EIR, namely "...any information in written, visual, aural, electronic or any other 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;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);"

16. The Commissioner has initially considered the nature of the information which the complainant seeks, i.e. various policies.
17. In the Commissioner's opinion, any possible relationship between the requested information and matters affecting the environment is too remote to satisfy the definition of environmental information which is described by regulation 2 of the EIR. The Commissioner has therefore decided that the complainant's request falls to be considered under the FOIA.

Is CHG a public authority?

18. The FOIA gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.
19. If a public authority receives a request for information it is legally obliged to provide it within 20 working days, unless any of the exemptions contained within Part II of the FOIA apply. If a public authority believes an exemption does apply to the information that has

been requested then the public authority must explain to the requester why the exemption applies, in accordance with section 17 of the FOIA.

20. The question here is whether CHG is a public authority for the purposes of the FOIA.
21. The definition of 'public authority' is given in section 3(1) of the FOIA. In particular it states that under the FOIA a 'public authority' means -
 - "(a) subject to section 4(4), any body which, any other person who, or the holder of any office which -*
 - (i) is listed in Schedule 1, or*
 - (ii) is designated by order under section 5, or*
 - (b) a publicly-owned company as defined by section 6."*
22. Section 5 allows the Secretary of State to designate a public authority by order.
23. Section 6 states that a company is a 'publicly-owned company' for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is wholly owned by any public body listed in Schedule 1 (other than a government department or any authority which is listed only in relation to particular information).
24. At the time of the complainant's request, and as at the date of this decision notice, CHG is not listed in Schedule 1 nor has the Secretary of State made an order under section 5 designating CHG as a public authority. Accordingly, the Commissioner considers that CHG is not a public authority by virtue of either section 3(1)(a)(i) or (ii) of the FOIA.
25. The Commissioner has gone on to consider whether CHG is a publicly owned company as defined by section 6 of the FOIA.
26. CHG is not wholly owned by the Crown, so the Commissioner needs only to consider whether or not it is wholly owned by any public body listed in Schedule 1.
27. According to its website²: "*Clarion Housing Group Limited is a charitable registered society (Reg No 28038R). Registered with the Regulator of Social Housing (Reg No LH4087) VAT No (675 646 394)*" and "*is made up of a number of charitable and commercial subsidiaries. We do not distribute profits to shareholders but invest everything back into our social purpose*".

² <https://www.clarionhg.com/about/our-governance/>

28. The Commissioner considers this to evidence that CHG is independent and is not wholly owned by any public authority listed in Schedule 1 of the FOIA.
29. In view of the arguments considered above, the Commissioner is of the opinion that CHG is neither wholly owned by the Crown, nor any public authority listed in Schedule 1, and therefore it does not satisfy the definition of a publicly-owned company as contained in section 6.
30. Accordingly, the Commissioner considers that CHG is not a public authority by virtue of section 3(1)(b) of the FOIA.
31. As it is not a public authority by virtue of either 3(1)(a)(i) or (ii), or by 3(1)(b), the Commissioner therefore finds that CHG was not required to respond to the complainant's request under the FOIA.

Other matters

32. Although they do not form part of this notice the Commissioner wishes to highlight the following.
33. The determination in this case has been made under the remit of the FOIA, necessarily based on the wording of the request and the type of information being requested. However, it is the Commissioner's view that, had the request been for environmental information, her determination would very likely have been the same, ie that CHG would also not be a public authority for the purpose of the EIR.

Right of appeal

34. 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

35. 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.
36. 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

Carolyn Howes
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Wycliffe House
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