

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

Date: 19 July 2023

Public Authority: Lake District National Park Authority
Address: Murley Moss
Oxenholme Road
Kendal
LA9 7RL

Decision (including any steps ordered)

1. The complainant has requested letters of complaint received by the Lake District National Park Authority (LDNPA) relating to Gaynor Sports and air conditioning enforcement. LDNPA provided information to the complainant but stated that it did not hold any further complaint letters.
2. The Commissioner's decision is that LDNPA has complied with its obligations under regulation 12(4)(a) of EIR and provided all the information it holds within the scope of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 24 November 2022, the complainant wrote to the Lake District National Park Authority (LDNPA) and requested information in the following terms:

"All letters of complaint relating to Gaynor Sports Air Conditioning Enforcement, The Slack, Ambleside.

Information to be supplied as – the information in permanent form (printed or photocopied).”

5. LDNPA responded on 5 January 2023 under the EIR enclosing information relevant to the request but redacting parts of the correspondence that might identify who raised the concern or any information identifying persons under regulations 12(5)(f) and 13 of EIR.
6. On 6 January 2023 the complainant wrote to LDNPA and asked for a copy of the original letter(s) of complaint as these were not included in the response. LDNPA responded on 23 January to state the original compliance complaint was received over the 'phone and handwritten forms were created that had been provided in the response.'
7. On the same date the complainant reiterated they wanted to see the original complaint letters. LDNPA again explained that on page 10 of the disclosed information there is a copy of the handwritten form following a 'phone call.' The complainant stated they had seen an original email from their neighbour and that was what they were seeking as their neighbour did not call to complain but emailed. In addition to the complainant alluded to a further enquiry made to LDNPA that prompted a response from LDNPA that another complaint had been received.
8. Following additional searches LDNPA responded to the complainant on 21 April 2023 and attached information that comprised a complaint about LDNPAs processes. The complainant again stated they were seeking a copy of their neighbour's original complaint as they had seen this email but did not have a copy of it.
9. On 26 May 2023 LDNPA wrote to the complainant again stating that a search of its records would be done again.
10. At the time the Commissioner accepted the complaint for investigation no further contact had been made between the LDNPA and the complainant.

Scope of the case

11. The Commissioner accepted the case for investigation on 17 May 2023.
12. The Commissioner considers that the scope of his investigation is to determine if the public authority holds any additional information in scope of the request that has not already been provided to the complainant.

Reasons for decision

13. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
14. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
15. In scenarios where there is some dispute between whether the public authority holds relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
16. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
17. The Commissioner asked LDNPA to explain the searches it had carried out and to specifically address the original complaint letter the complainant was adamant was held.
18. LDNPA explained that its records for planning enforcement complaints about potential unlawful development are held in its electronic filing system and planning database. Records for complaints about service failure are held in LDNPA's electronic complaints database. All cases receive a reference number and all the databases have been searched and any in-scope information already provided to the complainant.
19. Following contact from the Commissioner, LDNPA has again searched its databases. It searched its electronic records for any records for the first enforcement investigation (E/2017/0215) that would be held in LDNPA's electronic filing structure and the planning database. It also searched for records relating to the second enforcement investigation (E/2020/0008) that are held in LDNPA's electronic filing structure and planning database.
20. LDNPA also searched electronic records for the complaint (COM.2019.177) where the person complaining about the unlawful development expressed dissatisfaction with LDNPA's investigation prompting LDNPA to look into the matter for a second time. LDNPA provided a comprehensive list of all the information held but did not identify any 'original complaint' that had not already been disclosed.

21. The Commissioner understands that the complainant is not convinced that they have been provided with all the information falling within the scope of their request, specifically a copy of the original complaint made by their neighbour to LDNPA. It is not the Commissioner's role to establish what information a public authority should hold, or whether it has a requirement, statutory or otherwise to hold certain information. Nor will the Commissioner undertake a forensic examination of all records held by a public authority if it is not proportionate to do so. The Commissioner's role is to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
22. The complainant argues that LDNPA is deliberately withholding information. They state the earliest complaint on file from the neighbour seems to be 6 January 2020 in an email sent at 18:20 and addressed to a named person at LDNPA. In that email the complainant states it is said that:

*"This is a follow up email to our **previous objection** and correspondence relating to the installation of Air Conditioning Units by Gaynor Sports.."*
23. The complainant states the first reference to a complaint in the LDNPA notes is a handwritten form registering a complaint dated 15 November 2017. It is this 'original' complaint they are seeking. LDNPA responded to this on 17 November 2017 providing the E/2017/0215 reference.
24. The Commissioner notes that LDNPA has repeatedly stated the handwritten form followed a 'phone call despite the complainant asserting that their neighbour did not call to complain but emailed; they had seen this email but did not have a copy of it. LDNPA believes the email the complainant is referring to may be a letter sent to the Planning Inspectorate rather than a letter/email sent to LDNPA as third parties can make complaints directly to the Planning Inspectorate and LDNPA is aware complaints made did refer to air conditioning units.
25. Based on the evidence available to him, the Commissioner is satisfied that LDNPA has carried out adequate searches, which would have been likely to locate information falling within the scope of the request. Based on the searches undertaken and the other explanations provided, as referred to above, the Commissioner is satisfied that, on the balance of probabilities, LDNPA does not hold any additional information falling within the scope of the request, specifically any 'original' complaint email or letter other than that which it has already disclosed.

Right of appeal

26. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

27. 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.

28. 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

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