

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

Decision notice

Date: 17 September 2019

Public Authority: Mansfield District Council
Address: Civic Centre
Chesterfield Road South
Mansfield
NG19 7BH

Decision (including any steps ordered)

1. The complainant has requested from Mansfield District Council (the Council) information in relation to planning and building control inspections of two named commercial entities regarding a handover of various facilities in Warsop. The Council stated that it did not hold information of such description.
2. The Commissioner's decision is that, on the balance of probabilities, the Council stated correctly that it did not hold the requested information, in compliance with Regulation 12(4)(a) of the EIR.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 14 December 2018 the complainant requested information of the following description:

"My formal EIR 2004 request of 14th December 2018 is for a copy, or copies of any and all documents that demonstrate the following:

That a representative[s] from MDC Planning and Building Control Department inspected the estate and 'officially notified', electronically, digitally or in writing, both Bellway Homes Ltd and Meadfleet Ltd that:

1) 'The various facilities on The Royal Estate at Warsop were in an acceptable condition.

2) That the site had been laid out in accordance with the approved scheme of landscaping.'

Documents that prove MDC Planning and Building Control Department, in due diligence of MDC's duty to the public, either did, or did not issue official approval for 'handover' to take place 'legally'.

That MDC were aware, or not aware of 'handover' of the site taking place from Bellway Homes Ltd to Meadfleet Ltd in April 2018.

I look forward to receiving documents that provide the information I have described and requested in some detail, at your earliest opportunity."

5. The Council responded on 14 January 2019. It stated that it did not hold information within the scope of the information request.
6. The complainant wrote to the Council on 23 January 2019 requesting an internal review and raised particular issues as the grounds for this review request.
7. The Council responded on 14 February 2019. It provided some explanations in relation to the issues raised. However, the Council upheld its original position reaffirming that it did not hold information within the scope of the request.

Scope of the case

8. The complainant contacted the Commissioner on 15 January 2019 to complain about the way his request for information had been handled.
9. The complainant was advised that, since the requested information was related to the environment, the matter would be dealt with under the EIR. It was explained to the complainant that under the EIR the Council should have been given the opportunity to internally review its initial response, prior to the Commissioner considering the complaint.

10. Upon receiving the outcome of the Council's internal review, the complainant confirmed to the Commissioner that he was not content with the response received and asked the Commissioner to investigate the case.
11. Following the Commissioner accepting this case for investigation, the complainant contacted the Commissioner a number of times to raise matters other than the information request above. It was made clear to the complainant that this case would relate only to his information request of 14 December 2018.
12. Therefore, the analysis below considers whether, on the balance of probabilities, the Council held information within the scope of the request at the time that request was made.

Reasons for decision

Is the requested information related to environment?

13. 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.
14. 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 planning and building issues. These matters 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 – Duty to make environmental information available on Request

15. Regulation 5(1) of the EIR states that "*...a public authority that holds environmental information shall make it available on request.*"

Regulation 12(4)(a) – information not held

16. Regulation 12(4)(a) of the EIR provides 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.

17. In situations where a public authority claims that the information is not held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, will decide whether this is the case based on the adequacy of the public authority's searches for the information and any other reasons explaining why the information is not held.
18. In making her decision, the Commissioner will consider the complainant's evidence and arguments. She will consider the actions taken by the public 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. She will also consider reasons why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner reiterates that she is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held (or was held at the time of the request) on the civil standard of the balance of probabilities¹.
19. The Council stated that it undertook all necessary searches for the information requested when it responded to the complainant's request of 14 December 2018, and furthermore when in the process of its internal review and when responding to the Commissioner's queries.
20. The Council confirmed that the searches were focused on paper and electronic planning application files relating to the development at the "Royal Estate", because if the information sought was held it would have been related to this residential development. These searches also included emails of relevant officers within the planning department previously involved in applications related to the "Royal Estate".
21. The Commissioner asked the Council which terms were used when it conducted its searches and whether they included records held locally on personal computers used by relevant officials.
22. The Council explained that all its computers, including laptops, are networked to its main server therefore the searches *"would have identified any electronic document held within the relevant development file or that have been sent / received by email."*
23. In relation to keywords used, the Council explained that it does not hold records on the terms used, but it stated that the words "Royal Estate"

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072.

and "Meadfleet" would have been included "as these are key words that the complainant used."

24. The Council confirmed that no information that would fall within the scope of the request had been deleted or destroyed.
25. The Commissioner asked the Council whether there was a business purpose for which the requested information should be held. The Council stated there was not.
26. The Commissioner also asked whether there were any statutory requirements upon it to retain the information. The Council stated there were not.
27. The Commissioner has carefully reviewed the submissions of both parties and their arguments put forward.
28. The Commissioner has considered the searches performed by the Council and explanations as to why there is no information held and the complainant's concerns.
29. Having considered all available information, the Commissioner does not consider that there is any evidence to show that the Council held information as per the complainant's description.
30. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council did not hold the requested information. Accordingly, she finds that regulation 12(4)(a) of the EIR was engaged in this case.
31. Technically, regulation 12(4)(a) of the EIR is subject to the public interest test. However, the Commissioner considers this is an unnecessary exercise where she has found that a public authority did not hold the requested information at the time of the request. The Commissioner cannot consider the public interest factors for and against disclosure when she has found that there is no recorded information held for potential disclosure.

Right of appeal

32. 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

33. 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.
34. 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

Ben Tomes
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF