

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

Decision notice

Date: 22 March 2021

Public Authority: The Crown Estate
Address: 1 St James's Market
London
SW1Y 4AH

Decision (including any steps ordered)

1. The complainant requested correspondence relating to a land sale. The Crown Estate provided some information and stated that it held no further information within the scope of the request.
2. The Commissioner's decision is that the Crown Estate should have dealt with the request under the EIR, but that it did not hold any further relevant information beyond that which it had already provided. The Commissioner is therefore satisfied that the Crown Estate complied with its duty under Regulation 5(1) of the EIR.
3. The Commissioner does not require further steps.

Background

4. The request relates to the sale of some agricultural land in Somerset to a developer. The Crown Estate made the decision to forego a clawback provision within the sale in exchange for obtaining an above-market upfront price for the land. This means that, if the developer were to obtain planning permission in the future (making the land considerably more valuable), the Crown Estate (and therefore HM Treasury) would not be entitled to any share of the increased value.
5. The complainant considers that the sale was mishandled and has engaged in considerable correspondence with the Crown Estate over the matter. In particular, he is concerned about the role of the land agent

who advised the Crown Estate on the sale, because the same company subsequently began acting for the developer. The Crown Estate denies that any conflict of interest occurred and argues that the sale was conducted properly. Whether to take a higher upfront fee or a share of future uplift will always be a difficult decision. If planning permission is granted, the Crown Estate may miss out on a considerable sum – but equally, if that permission is not forthcoming, the developer will be left with a very expensive patch of farmland.

6. The Crown Estate belongs to the reigning monarch 'in right of The Crown', that is, it is owned by the monarch for the duration of their reign, by virtue of their accession to the throne. The Commissioners of the Crown Estate are charged with managing the Estate. Whilst the exact legal status is unclear, the Commissioner is satisfied that the Crown Estate, being owned by the Crown, is a publicly-owned company for the purposes of FOIA and is therefore also a public authority for the purposes of the EIR.
7. On 15 July 2020, the complainant made a request for information that had been considered as part of an investigation into a formal complaint he had submitted. The Crown Estate refused this request as vexatious on 7 August 2020.

Request and response

8. On 10 August 2020, whilst seeking an internal review of the Crown Estate's decision to refuse the July request as vexatious, the complainant also requested information of the following description:

"I now require all communications relating to the land sale at Orchard Portman between Savills and the Crown Estate as this missing public interest information from the Crown Estate is now needed towards the RICS complaint referral.

"Re "The Crown Estate failed to add a clause allowing it to recoup any uplift in the value of the land, meaning the Treasury will not benefit if the development goes ahead."

"As per the above, I also would like to see all internal and external communications relating to the decision not to apply a clawback provision on the sale (for land value uplift) should Taylor Wimpey later on gain planning permission."

9. On 8 September 2020, the Crown Estate issued a holding response. It confirmed that it held information relevant to the request, but it believed

it needed additional time to consider the balance of the public interest in respect of a qualified exemption (section 43(2) of the FOIA).

10. On 6 October 2020, the Crown Estate issued its formal response. It provided the complainant with some redacted information and relied on sections 40(2) and 43(2) of the FOIA to withhold the information it had redacted.
11. The complainant requested an internal review on 7 October 2020 as he believed that further information was held. The Crown Estate sent the outcome of its internal review on 4 November 2020. It now stated that it held no further information within the scope of the request.

Scope of the case

12. The complainant first contacted the Commissioner on 15 September 2020 to complain about the way his July request for information had been handled. Once the Crown Estate had completed its internal review of that request, the Commissioner accepted the complaint for further review.
13. However, by the time the Commissioner was ready to begin her investigation, the Crown Estate had completed its internal review in respect of the August request. Therefore, at the outset of her investigation, the Commissioner wrote to the complainant and, noting that matters had moved on since the complaint was accepted, suggested that it might be more useful for the investigation to focus only on the August request. The complainant agreed to this suggestion.
14. The Commissioner then wrote to the complainant again to set out the formal scope of the investigation. She noted her provisional view that the request should have been dealt with under the EIR. However, she further noted that, based on her view of the disclosed information, it was likely that the EIR equivalents of the FOIA exemptions the Crown Estate had cited would be engaged. As the redacted information appeared to relate to transactions other than the one which was of interest to the complainant, the Commissioner informed the complainant that, unless he had objections, she intended to focus her investigation solely on whether the Crown Estate held further relevant information. The complainant did not object to the proposed scope of the investigation.
15. The scope of the analysis that follows is therefore to determine whether the Crown Estate has identified all the information it holds within the scope of the request.

Reasons for decision

Is the requested information environmental?

16. Regulation 2(1) of the EIR defines environmental information as being information 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)...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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*

17. The information in question relates to the process by which the Crown Estate sold some land that it owned to a developer. The land in question appears to have been largely used for agricultural purposes and was being sold to an entity that wished to use it for residential development.

18. The Commissioner is therefore satisfied that the information is information on a "measure" (ie. farming and construction) affecting or likely to affect the elements of the environment (landscape and soil). Whilst this does not make it any more or less likely that the Crown

Estate holds relevant information, for procedural reasons, she has therefore assessed this case under the EIR.

Regulation 5(1) - Held/Not Held

19. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"
20. 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. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
21. For clarity, the Commissioner 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 on the civil standard of the balance of probabilities.

The complainant's view

22. The complainant's view that information is held appears to be based on the controversial nature of the transaction itself.
23. The complainant considers that the Crown Estate's decision not to insert a "clawback" provision into the sale agreement is an "unusual" one. He noted that the correspondence that had been disclosed showed that the Crown Estate's land agent had suggested that the sale agreement should include a clawback provision and therefore there should be a paper trail demonstrating why the Crown Estate chose not to insert one.
24. The complainant did not consider that the information that had been disclosed was sufficient to explain why such a decision had been made.
25. Recent changes to local and national policy, the complainant argued, had significantly increased the chances that planning permission would be granted for the land – greatly increasing its value. As a result, the complainant argued, there was a considerable public interest in understanding the Crown Estate's decision making process in order to establish whether it has achieved value for money.

The Crown Estate's position

26. The Crown Estate noted that it had already disclosed some of the information to the complainant in response to previous requests it had

made – it provided copies of some of these previous responses to the Commissioner.

27. In relation to the transaction, the Crown Estate explained that it had had to weigh the possibility of the land increasing significantly in value against the prospect of immediately realising the value of the land and allowing that cash to be reinvested in its portfolio. It noted that it was not allowed to borrow money and thus needed to sell surplus land in order to fund other projects. The decision to sell the land had been taken at board level and the decision, but not the discussion, had been recorded in the minutes – which the complainant had already received.
28. Nevertheless, the Crown Estate noted that it had searched its electronic files to establish whether any further correspondence was held:

"Our EDRMS system, Wisdom, was searched, as well as email accounts, and we engaged closely with local experts within the business (in our Rural team) and with our managing agents, Savills, in order to locate all information relevant to the various requests. We believe that all relevant information has been located, due to extensive searches and working closely with subject matter experts who dealt with the sale."
29. The Crown Estate informed the Commissioner that it had carried out searches using the name of the developer and the name of the parcel of land. It also confirmed that whilst it had applied exemptions to redact some information, it had not withheld any documents in their entirety.
30. Finally, the Crown Estate confirmed that it had no reason to believe any information had gone missing and that the complainant had been provided with all relevant information in response to either this or previous requests.

The Commissioner's view

31. It is rare that the Commissioner can prove conclusively that information does or does not exist – nor is she required to do so. Her role is to judge whether it is more likely than not that information is held. In this case, she considers that it is unlikely that the Crown Estate holds further relevant information.
32. The complainant is clearly concerned about the transaction. It is not the Commissioner's role to assess whether the transaction has been conducted appropriately (that is already the subject of a separate investigation) but whether further recorded information exists.
33. The Commissioner appreciates that the Crown Estate has provided a great deal of correspondence relating to this transaction already. It has

carried out appropriate and relevant searches to establish whether any further information is held.

34. Whilst the Commissioner accepts that the complainant believes that a transaction of this nature ought to be covered by a longer paper trail, her enquiries on this matter do not indicate that further information is held by the Crown Estate.
35. The Commissioner is therefore satisfied, on the balance of probabilities that the Crown Estate has disclosed all the relevant information that it holds.

Right of appeal

36. 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

37. 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.
38. 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

Pamela Clements
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