

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 November 2022

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

Decision (including any steps ordered)

1. The complainant requested planning information from Mansfield District Council ("Mansfield DC"). Mansfield DC denied that the requested information was held.
2. The Commissioner's decision is that the Mansfield DC does not hold the requested information.
3. The Commissioner does not require the Mansfield DC to take any steps.

Request and response

4. On 12 May 2021 the complainant made the following request for information to Mansfield DC under the EIR for:

"Please supply in accordance with the Environmental Information Regulations 2004 and with respect to the parameters detailed below 1 - 6, the following information:

The UK Environment Agency Acting were acting as a Consultant (See Attached two Letters d (a) & (b) dated June and July 2020) for the following Planning Applications.

2006/0079/NT | PROPOSED RESIDENTIAL DEVELOPMENT 263 DWELLINGS AND ASSOCIATED WORKS. The Royal Estate Off King Road Warsop Nottinghamshire.

Communications and comments from the general Public and Consultant Organisations such as the UK Environment Agency are NOT available on the LPA's Planning Portal in the 'Documents' section as described under the 'Comments' section of: 2006/0079/NT | PROPOSED RESIDENTIAL DEVELOPMENT 263 DWELLINGS AND ASSOCIATED WORKS.

These specific documents have been removed from Public View, as noted in the UK Environment Agency's letters attached as (a) & (b) 'Documents were not available on the LPA's Planning Portal',

This EIR2004 request intends that all subsequent planning application revisions listed on the LPA's Planning Portal, attached document (d) are included in this EIR2004 request and included in the LPA's (Mansfield District Council) search and return because the relevant documents have all been removed from 'Public View' on the LPA's Planning Portal.

1) All material communications from the UK Environment Agency acting in the capacity of 'Consultant Organisation' to the LPA (Mansfield District Council) as 'described' in the attached two letters (a) & (b) sent from the UK Environment Agency to [name of complainant redacted by ICO].

2) Any and all communications to The UK Environment Agency from the LPA (Mansfield District Council) related to the above planning applications and subsequent physical development of the Estate up to 13th May 2021.

3) This EIR2004 request intends that all communications From the UK Environmental Agency to the Local Planning Authority (Mansfield

District Council) and all communications from the Local Planning Authority (Mansfield District Council) to the UK Environment Agency, related to 2006/0079/NT and any later revisions as per attachment (d), are included in the search and return and using January 01 2004 to 13th May 2021 as the date parameters.

4) This EIR2004 request intends that all 'Internal communications' within the LPA (Mansfield District Council and Ashfield District Council acting in a legal capacity to the LPA)) which related to the UK Environment Agency's consultations with the LPA related to 2006/0079/NT and any later revisions as per attachment (d), are included in the search and return and using January 01 2004 to 13th May 2021 as the date parameters.

5) This EIR2004 request intends that any Incoming, outgoing and internal communications made by Ashfield District Council acting in a legal capacity for the LPA regarding the advice provided by the UK Environment Agency in respect of the 'Flood Protection Zone', 'Flood Plain', 'Functional Flood Plain' or designated 'Public Access Open Space', related to 2006/0079/NT and any later revisions as per attachment (d), be included in the search and return and using January 01 2004 to 13th May 2021 as the date parameters.

6) Any and all internal communications within the LPA (Mansfield District Council), or the LPA's legal department (Ashfield District Council, Legal Department) that provide 'Material Evidence' supporting [name of officer redacted by ICO] comments (The Head of Planning and Regeneration at Mansfield District Council) in [name of officer redacted by ICO]'s Letter to [name of complainant redacted by ICO] dated 27th April 2021 regarding the LPA's 'Enforcement Team' having been involved with (past tense) and continuing to be involved with the 'Royal Estate' at Warsop, otherwise known as Kings Park and Kingswood Park, specifically 'Reef Close NG20 0FL' and the Northern Boarder of the estate (The banks of the River Meden) be included in the search and return and using January 01 2004 to 13th May 2021 as the date parameters."

5. Mansfield DC responded on 20 July 2021 and denied holding the requested information.
6. Mansfield DC provided the outcome of an internal review on 24 August 2021 in which it maintained its original position that the requested information was not held by it.

Scope of the case

7. The complainant contacted the Commissioner on 9 September 2021 to complain about the way his request for information had been handled.
8. The following analysis is therefore whether Mansfield DC is likely, on the balance of probabilities, to hold any information falling within the scope of the complainant's request for information.

Reasons for decision

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

9. Under regulation 12(4)(a) of the EIR, 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.
10. Whilst regulation 12(4)(a) is a qualified exception, the Commissioner's position is that it is not necessary to consider the public interest. To do so would be illogical because the public interest cannot favour disclosure of information which is not held.
11. In scenarios where a complainant disputes the public authority's reliance upon regulation 12(4)(a), or, where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

13. The Commissioner understands that the complainant is concerned that information has been withdrawn from Mansfield DC's online planning portal, and the request has therefore been made to seek that not publicly available.
14. The Commissioner also understands that the complainant holds concerns that Mansfield DC has failed to undertake appropriate searches for the requested information.

Mansfield DC's position

15. The Council has informed the Commissioner that no information has been identified that would fall within the parameters of the request.
16. The Council has explained that it has undertaken the following steps:
 - A manual search of the hardcopy planning records still retained by the Council, in respect of the years related to the request.
 - A search of the electronic records held on the Planning Team's case management system (iDox-EDRMS) for planning reference "2006/79/NT"
 - A search on the legal case management system used by the Council (Iken), using the keywords "2006/79/NT", "royal estate", "Bellway Homes", and the complainant's forename and surname.
 - Staff consultations with members of the Planning Team and Head of Service, which confirmed that any held information would either be retained as hardcopy planning records or held electronically on iDox-EDRMS.
 - Staff consultations with the Legal Services Department, which confirmed that all the information related to the Council had been transferred to it through iKen.
17. The Council has further provided the following explanations in respect of each of the parts of the request:
 - In respect of part 1) of the request, the Council understands that comments from the Environment Agency were summarised in a 2006 Committee Report, but that the original hardcopy documents from the Environment Agency are no longer held.
 - In respect of parts 2) and 3) of the request, the Council is not aware of there being any communications with the Environment Agency in relation to the planning application.
 - In respect of part 4) of the request, the Council is not aware of there being any internal communications in respect of the Environment Agency's consultation.
 - In respect of part 5) of the request, the information may be available from Ashfield District Council.
 - In respect of part 6) of the request, the Council considers that the comments made in the letter referred to "were erroneous in that whilst the Enforcement Officer has verbally discussed issues with

Barratts regarding a footpath that has not been provided, no enforcement action has or is being taken in respect of the footpath or land near Reef Close and the northern border of the estate”.

The Commissioner’s conclusion

18. The Commissioner has considered Mansfield DC’s position, in conjunction with the request.
19. Mansfield DC has provided an explanation of the searches it has undertaken for any recorded information that would fall within the parameters of the request.
20. Mansfield DC has also provided explanations of why, in respect of some parts of the request, it would not expect to hold information. In particular, the Commissioner notes the explanation in respect of part 6) of the request, in which Mansfield DC confirms that no enforcement action was taken (also noted in a related decision notice by the Commissioner – IC-115590-R1F1¹).
21. Whilst the Commissioner recognises the complainant’s dissatisfaction with Mansfield DC, there is no evidence available to the Commissioner that indicates that Mansfield DC has failed to undertake appropriate searches for information.
22. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021315/ic-115590-r1f1.pdf>

Right of appeal

23. 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

24. 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.
25. 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

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