

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 November 2022

Public Authority: South Lakeland District Council
South Lakeland House
Lowther Street
Kendal
Cumbria
LA9 4DQ

Decision

1. The complainant requested correspondence between South Lakeland District Council ("the Council") about Planning, Land Charges and Building Control for a specified address (the complainant's field) and third parties. The Council stated that it did not hold any information in scope of the request. The Commissioner determined that the Council wrongly handled the request under the FOIA and that the request fell to be considered under the EIR as it concerned planning and the environment. Having considered the application of regulation 12(4)(a) – information not held – which has similarities to section 1(1) of FOIA, he is satisfied that, on the balance of probabilities, the Council did not hold the information requested by the complainant. However, the Council failed to issue a refusal notice relying on Regulation 12(4)(a) of the EIR - information not held - within 20 working days, it therefore breached Regulation 14 of the EIR.

Request and response

2. The complainant made the following information request to the Council on 2 December 2021:

"Please send us: All correspondence to include emails, letters, audio recordings and minutes of meetings relating to our property (field - see address below) between:

1. South Lakeland District Council and any representatives of Richard Turner and Son, Old Sawley Grange, Gisburn Road, Sawley, Clitheroe, BB7 4LH

2. South Lakeland District Council and any representatives of Highways England.

3. South Lakeland District Council and any representatives of Amey Consulting

4. South Lakeland District Council and any representatives of Cumbria County Council Property address: (redacted) Land registry title number (redacted) Also referred to as: (redacted)."

3. The Council explained that it holds no information pertaining to correspondence between the Planning, Building Control or Land Charges department and the authorities/companies named in the information request in respect of the particular address.

4. The requester set out the grounds for internal review stating:

"I am surprised that having spent close to an additional £1.9million on the drainage and wetland scheme that there is no information regarding discussions between Highways England and Cumbria County Council and SLDC about this additional work(s). Can you please confirm that there is no documentation regarding discussions about our field being used to implement this additional scheme."

5. The final position of the Council is:

"I redirected the below to the relevant departments and can confirm that the answer still remains that there has been no correspondence regarding the address in question between our departments and the authorities/companies referred to in your information request.

Our Development Management Specialist stated that from the works described, planning permission may not have been required, therefore

the planning department would not have been involved. All drainage and highway matters fall under the jurisdiction of Cumbria County Council. Similarly, our Land Charges department would only have made contact with the specified authorities/companies in relation to a Local Land Charge search; from our records we do not have any searches pertaining to this particular matter.”

Reasons for decision

6. The Commissioner notes that the request seeks information about planning and drainage measures – which would be environmental information. Whilst it would not affect his conclusion as to whether the Council does or does not hold the information, he considers that the Council should have dealt with the request under the EIR.
7. This reasoning covers whether the Council are correct when it says that it does not hold the information the complainant requested.
8. The Commissioner considers that the Council has set out, in its internal review, a plausible explanation as to why it should not be expected to hold the information that has been requested. The response also indicates that, despite it not expecting to hold the information, it has nevertheless carried out appropriate searches to confirm that position.
9. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council does not hold information in the scope of the request.

Procedural matters

10. Regulation 14 of the EIR states that:

“(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) The refusal shall specify the reasons not to disclose the information requested, including—

(a) any exception relied on under regulations 12(4), 12(5) or 13; and

(b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).”

11. There is no explicit provision in the EIR which requires a public authority to confirm or deny that it holds information – although the Commissioner considers it good practice to do so.
12. However, where a public authority does not hold the particular environmental information that has been sought, the correct course of action is to inform the requestor that it is relying on Regulation 12(4)(a) of the EIR to refuse the request as the information is not held.
13. Whilst the Council did issue a refusal notice, that refusal notice did not cite Regulation 12(4)(a) of the EIR and was not served within 20 working days from receipt of the request.
14. The Commissioner therefore finds that the Council breached Regulation 14 of the EIR in responding to the request.

Right of appeal

15. 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

16. 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.
17. 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

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