

**Freedom of Information Act 2000 (Section 50)
*Environmental Information Regulations 2004***

Decision Notice

Date: 27 October 2009

Public Authority: East Lindsey District Council

Address: Tedder Hall
Manby Park
Louth
Lincolnshire
LN11 8UP

Summary

The complainant requested information about the owners of a private road adjoining his neighbour's property in order to be able to contact the owners. The Council responded saying that the information was not held. The Commissioner upholds the refusal under regulation 12(4)(a).

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. The complainant's request for information forms part of a long standing consideration of access to and from a property adjoining the complainant's property.
3. The complainant has made several requests for information regarding the same matter and first contacted the ICO on 14 January 2009. The ICO determined that a lack of clarity on behalf of both the complainant and the Council had resulted in confusion and dissatisfaction. The ICO offered the complainant assistance in his communication with the Council which was wrongly interpreted as a decision to

order the Council to provide the requested information, which resulted in further discord.

4. The Commissioner has informed the complainant that the ICO in its role as a regulator considers the actions of a public authority only with respect to its implementation of the Act and the EIR. The ICO has no expertise or jurisdiction to mediate on the issues involved with ownership of land or property.

The Request

5. The complainant did not submit a clear request for information to the Council.
6. On 6 January 2009 the Council wrote to the complainant asking;

"Please could you state exactly what information you are requesting? This will ensure you receive accurate and relevant information."
7. On 26 May 2009 the complainant wrote to the ICO with the following request to East Lindsey District Council ('the Council'):
8. "information.....which substantiates or dismisses the Council's contention that the service road which adjoins our neighbour's property(No 11) is a 'private road'. I had therefore asked for the name or names of the owner(s) in order to be able to contact them."
9. On 8 June 2009 the ICO wrote to the Council with details of the clarified request.
10. On 9 June 2009 the Council responded and provided the information it held.
11. On 10 June 2009 the complainant wrote to the Council expressing dissatisfaction with the response. Although the complainant does not consider this to be a request for an internal review, for the purposes of this decision notice the Commissioner considers this to be such a request.
12. On 12 June 2009 the Council provided an internal review upholding its original response.

The Investigation

Scope of the case

13. On 12 June 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically stated:
"I understood that you had cleared the release of the necessary information under the FOI, DPA and anything else"

14. The Commissioner has interpreted the complaint to be that the complainant believes the Council is withholding further information on the ownership of the private road. The Commissioner has investigated whether this information is held.
15. During the course of the Commissioner's investigation it became clear that the information provided in the formal response had already been provided to the complainant informally.
16. The Commissioner explained to the complainant that any ongoing dispute between himself and the Council is not a matter on which the ICO can arbitrate.
17. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

18. Having reviewed the nature of the request and the correspondence supplied by the complainant, the Commissioner decided that it was not necessary to contact the Council for any further explanation that the information was not held.

Analysis

Exceptions

Regulation 12(4)(a)

19. "For the purposes of paragraph (1)(a), 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;"
20. Informing an applicant that requested information is not held under EIR is a refusal which engages an exception to the duty to disclose. This exception is provided by regulation 12(4)(a) and the provisions of regulation 14 (refusal to disclose information) apply.
21. The Council confirmed that it did not own or maintain the road. The Council provided the most current information held from a planning application made in 2001 but advised that this was likely to be out of date. The Council also instructed the complainant on how to pursue his enquiries, without the requested information, to achieve his stated objective. The complainant declined to follow this advice. The request has been considered by different departments within the Council and the conclusion is that the information is not held. The Commissioner is satisfied that the Council does not hold the requested information. This is because there is no reason or expectation that the Council should hold the information as the road is private and therefore the Council has no responsibility for maintaining, controlling or managing the road.

Procedural Requirements

22. Where a public authority informs an applicant that requested information is not held but does not properly refuse it, it is technically in breach of regulation 14. The Commissioner notes that the Council did not cite the regulation in its response to the complainant's request and therefore is in breach of regulation 14(3)(a). However, although all exceptions are subject to the public interest test, it is not possible to consider the public interest where information is not held.

The Decision

23. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Regulations.

Steps Required

24. The Commissioner requires no steps to be taken.

Right of Appeal

22. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 27th day of October 2009

Signed

**David Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

R.12 Exceptions to the duty to disclose environmental information

Regulation 12(4)(a) provides that –

'For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

(a) it does not hold that information when an applicant's request is received...'

R.14 Refusal to disclose information

Regulation 14(3) provides that –

'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).'