

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

Decision Notice

Date: 07 September 2010

Public Authority: Exmoor National Park Authority
Address: Exmoor House
Dulverton
Somerset
TA22 9HL

Summary

The complainant made a request for a copy of the full audit which showed how £96,000, provided by Somerset County Council, was spent by the Park Authority for the maintenance of rights of way. The Park Authority stated that this money was not accounted for separately and therefore the information was not held. However it provided the complainant with a copy of the financial tables contained within its business plan and directed the complaint to the correct page showing the Recreation Management budgets. The complainant maintained that the money in question was "ring-fenced" and therefore information was held. The Commissioner considered the complainant's request and the way in which this was handled by the Park Authority. He concluded that no recorded information was held by the Park Authority relevant to the complainant's request and therefore that regulation 12(4)(a) of the EIR applied in this case. However, he also found that the Park Authority breached regulation 14(3)(a) by not citing the specific exception it relied upon when explaining that no information was held.

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.

The Request

2. On 20 November 2009 the complainant submitted the following request:

"I understand that K96 [sic] is given to ENP by Somerset County Council for Rights of Way this also includes salaries.

Please could I see the full audit for this money, and a breakdown on how and what the K96 [sic] is spent on. Could I also know the value of your dead stock (tractors, land rovers) and where this money was obtained."

3. The Park Authority responded in a letter dated 8 December 2009 in which is stated that the expenditure on the rights of way network is not reported separately, provided copies of the Business Plan and financial details and explained that the £96,000 was a small contribution towards the cost of maintaining the rights of way network. With regards to the request about "dead stock" the Park authority stated that it was unsure what the term was meant to cover, however it attempted to answer by providing information about vehicles it owned and stating these purchases were funded by a grant from the Department for the Environment, Food and Rural Affairs.
4. In a letter dated 18 December 2009 the complainant requested an internal review stating that she was unhappy with the information provided in relation to the £96,000.
5. The Park Authority provided the outcome of its internal review in a letter dated 20 January 2010. In this letter the Park Authority explained how its budget worked, that no information was held other than that already provided and offered to meet with the complainant to explain further.

The Investigation

Scope of the case

6. On 25 January 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- In her opinion the £96,000 is “ring-fenced” and therefore the Park Authority should hold the information she has requested

The response to the second part of the complainant’s request appears to have been satisfied and therefore has not been considered during the course of the Commissioner’s investigation.

Chronology

7. On 13 February 2010, the Commissioner contacted the Park Authority to inform it that a complaint had been made.
8. The Park Authority responded to the Commissioner’s letter on 10 March 2010, providing further explanation about where the £96,000 comes from and how it is allocated. The Park Authority confirmed that the money was not ring-fenced and therefore not accounted for separately.

Analysis

Substantive Procedural Matters

9. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
10. The Commissioner considers that the information requested falls within regulation 2(1)(c): “measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements”.
11. In this case the requested information is about planned maintenance of the rights of way network and is therefore information about a plan, or a measure, or an activity that affects or is likely to affect the state of the land and is therefore environmental information. The Commissioner therefore considers the complainant’s request as set out in paragraph 2 to be a request for environmental information.
12. Regulations 14(3)(a) and (b) require a public authority to issue its refusal specifying on which exception it wishes to rely and, if necessary, how it has considered the public interest test within 20 working days of receipt of the request. Under the EIR, regulation 12(4)(a) provides an exception for cases where the requested information is not held at the time of the request. It is the

Commissioner's view that the Park Authority should have advised the complainant that it does not hold the requested information and that it therefore wished to rely on exception 12(4)(a) of the EIR within 20 working days of the complainant's request. As the Park Authority failed to refer to the specific exception at 12(4)(a) when informing the complainant no information was held, the Commissioner finds that it breached regulation 14(3)(a).

Exception 12(4)(a)

13. As mentioned above, regulation 12(4)(a) provides a specific exception for cases where the public authority wishes to claim that the requested information is not held at the time the request is received. Although the Park Authority failed to cite this exception when corresponding with the complainant, the Commissioner will go on to consider this case in this context and decide whether regulation 12(4)(a) of the EIR applied to this request.
14. The normal standard of proof to apply in determining whether a public authority does hold any requested information is the civil standard of the balance of probabilities.
15. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. In this case the public authority explained that the money in question is not accounted for separately as it is a contribution to the running costs incurred by the Park Authority. It was not therefore deemed to be appropriate, or a good use of staff resources, to ask the Park Authority to carry out specific searches regarding the £96,000.
16. The complainant states that the £96,000 in question is "ring-fenced" and therefore must be accounted for, however no evidence has been provided to the Commissioner to support the complainant's assertion.
17. The Commissioner therefore asked the Park Authority how it used the £96,000 provided to them by Somerset County Council.
18. The Park Authority provided the following explanation:

"By way of clarification, Somerset County Council as the Highways Authority has entered into a delegation agreement with this Authority over that part of their Rights Of Way network that falls within the area of the National Park. Under this agreement the Authority maintains the

Rights of Way network carrying out the necessary inspection, maintenance and improvement works.....

.....In recognition of the costs incurred by this Authority in carrying out these works, which are the statutory responsibility of the County Council, a negotiated contribution is made each year. For 2009/10 this contribution amounts to £96,000 which is regarded as income towards the costs of the Authority on Rights of Way matters and which are estimated to be in excess of £500k in 2009/10. As has been explained to [the complainant] no detailed activity or job costing is carried to associate costs with particular jobs or funding sources and this £96,000 is not accounted for separately."

19. The Commissioner is therefore satisfied that at the time of the request, the Park Authority did not hold a full audit of the £96,000 in question or a breakdown of how and what it was spent on. The Park Authority has stated that the £96,000 is not "ring fenced" and therefore contributed to general overheads and it is not possible to isolate what specifically it was spent on. Based on the submissions received from the Park Authority, he is satisfied that on the balance of probabilities no recorded information exists relevant to the complainant's request and regulation 12(4)(a) of the EIR applies in this case.

Public Interest Test

20. Regulation 12(4)(a) is subject to the public interest test. However it will not usually be possible for the Commissioner to consider the public interest test in respect of information which is not held, as in this case and therefore he has not commented on it further in this Notice

The Decision

21. The Commissioner's found that the Park Authority breached regulation 14(3)(a) by not informing the complainant of the specific exception on which it relied when concluding no information was held.
22. Although the Park Authority failed to cite regulation 12(4)(a) of the EIR when responding to the complainant's request, the Commissioner is satisfied that this exception applies to the circumstances of this case. As explained above, he is satisfied that on the balance of probabilities the Park Authority does not hold any recorded information relevant to the complainant's information request.

Steps Required

23. The Commissioner requires no steps to be taken.

Right of Appeal

24. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 07 day of September 2010

Signed

**Lisa Adshead
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 12(4) 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;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

Regulation 14(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).