

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

Decision Notice

Date: 28 July 2011

Public Authority: Ashford Borough Council
Address: Civic Centre
Tannery Lane
Ashford
TN23 1PL

Summary

The complainant requested information concerning plans to redevelop a church in Ashford. Ashford Borough Council ("the council") said that it did not hold two of the requested documents and it refused to provide the information that it did hold on the basis that it could be withheld using the exceptions under regulations 12(5)(e) and 12(5)(f) of the Environmental Information Regulations 2004 ("the EIR"). When the Information Commissioner ("the Commissioner") contacted the council, it agreed to disclose all of the information that it originally withheld because of the passage of time. As the complainant was not willing to accept that the remaining information he requested was not held, the Commissioner investigated this point. He was satisfied that the council did not hold this information on the balance of probabilities. The Commissioner found a breach of regulation 14(2) in this case.

The Commissioner's Role

The 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 Commissioner. In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 ("the FOIA") are imported into the EIR.

The Request

1. On 30 September 2010, the complainant requested information in the

following terms:

"Under the Freedom of Information Act, please would you release to me the following site-specific documents which should (as joint Petitioners and thus clients in the proposed redevelopment of Ashford Parish Church) be in your possession and are now public documents as the contract for works has been signed:

Site Specific (St Mary the Virgin Ashford)

- *Construction Phase Plan*
 - *Customer Care Policy*
 - *Safety Policy*
 - *Method Statements and risk assessments associated with these policies".*
2. The council replied to the request on 29 October 2010. It stated that it held some, but not all of the information requested. Referring to the information it held, it added that this was exempt under section 31, 21 and 43 of the FOIA and the public interest favoured withholding the information.
 3. The complainant requested an internal review of the refusal on 1 November 2010.
 4. The council completed its internal review on 17 December 2010. The council said that it had decided that it should have considered the request under the terms of the EIR rather than the FOIA. The council clarified that it did not hold a customer care policy or a safety policy. It said that it did hold a construction phase plan and method statements and risk assessments, however, it considered that this information was except under regulation 12(5)(e) and 12(5)(f) of the EIR. It added that the public interest favoured maintaining the exceptions.

The Investigation

Scope of the case

5. On 3 November 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the council had been correct to refuse to provide the information he requested. He subsequently clarified that he also wished the Commissioner to investigate whether the council's position that some of the information he requested was not held.

6. For clarity, following the disclosure of the information, the complainant asked the Commissioner to consider whether or not the council had correctly refused to provide the information to him at the time of the request. In view of the fact that the information has now been disclosed, the Commissioner considers that this matter has now been informally resolved and this notice therefore contains no analysis relating to the use of the exceptions that were relied on.
7. The focuses of this notice is solely then, whether the council holds a site specific safety policy or a customer care policy with regard to this specific redevelopment.

Chronology

8. Between January 2011 and June 2011 the Commissioner exchanged correspondence with the parties to further his enquiries and clarify the nature of the complaint. During this time, the council released all of the information it had previously withheld.

Analysis

Substantive Procedural Matters

Did the council hold a site specific safety policy and a customer care policy?

9. In accordance with regulation 3(2), environmental information is held by a public authority if the information is in the authority's possession and has been produced or received by the authority or if it is held by another person on behalf of the authority.
10. The council explained to the Commissioner that it appeared that the complainant had misunderstood its involvement in the project as he had referred to the council as a "client". It explained that it had not entered into any contract concerning the works and was not the client. The church was the client and as the client, the church had entered into a contract with the developer. The council said that it was acting on behalf of the church. It described that its responsibility was to provide overall project management on behalf of the church including construction design management (CDM) which is a statutory requirement relating to health and safety.
11. The council said that the church held the contractor's general health and safety policy which the council had seen but did not hold. It noted that the complainant had however specified in the request that he wanted site specific safety information. The council explained that it

had been provided with site specific safety information, albeit not in a specific policy document as envisaged by the complainant. It added that all of this information had already been disclosed to the complainant as part of this complaint. It added that the church may hold a customer care policy but if it did, that information would not be held on behalf of the council. The church would not be obliged to provide it to the council and it is not necessary for the performance of its responsibilities relating to the project.

12. The council said that it had conducted a comprehensive search of relevant paper and electronic records to check that it did not hold a site specific safety policy or a customer care policy, including a search of the council's email archive and records held by the council's project office. It had also consulted relevant staff. It said that the information being sought had never been held.
13. Having considered the above details, the Commissioner is satisfied that on the balance of probabilities, the council did not hold a site specific customer care policy, nor was the church holding one on the council's behalf. In relation to the request relating to a site specific safety policy, the Commissioner notes that the complainant was wrong to assume that the council would hold a single site specific safety "policy". It held a number of items relating to site specific safety and the Commissioner notes that these have all been provided.

Procedural Requirements

14. The Commissioner was satisfied that a site specific customer care policy and a safety policy were not held by the council. He therefore does not consider that the council breached the requirements of the EIR in this respect.
15. However, the Commissioner considers that the council breached regulation 14(2) because it did not refuse the request under the EIR within 20 working days.

The Decision

16. The Commissioner's decision is that the council dealt with the following elements of the request in accordance with the requirements of the EIR:
 - It did not breach the requirements of the EIR because it did not hold a site specific customer care policy or a safety policy.
17. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the EIR:

- The council breached regulation 14(2) because it did not refuse the request under the EIR within 20 working days.

Steps Required

18. The Commissioner requires no steps to be taken.

Right of Appeal

19. 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: 0300 1234504

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 28th day of July 2011

Signed

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

Legal Annex – Environmental Information Regulations 2004

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 14 - Refusal to disclose information

Regulation 14(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.

Regulation 14(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.