

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 6 October 2011

Public Authority: Warkworth Harbour Commissioners
Address: Harbour Office
Harbour Road
Amble
Morpeth
Northumberland
NE65 0AP

Decision (including any steps ordered)

1. The complainant requested information from Warkworth Harbour Commissioners (WHC) relating to the granting of a licence to the Coquet Yacht Club to lay moorings in the River Coquet. WHC refused to comply with the request on the basis that it was not a public authority under the Freedom of Information Act 2000 (the "Act"). The Commissioner accepts that WHC is not a public authority for the purposes of the Act but has determined that the information in question is environmental information, as defined by the Environmental Information Regulations 2004 (the "EIR"). The Information Commissioner (the "Commissioner") determined that WHC is a public authority for the purposes of the EIR and it is therefore required to respond to the request in line with the provisions of those regulations.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information or provide the complainant with a relevant refusal notice in line with regulation 14 of the EIR.
3. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 9 November 2010, the complainant wrote to WHC and requested information in the following terms:

"This is a request under the Freedom of Information Act for copies of all documents, emails and other materials relating to the granting of a license (and any subsequent amendments) to the Coquet Yacht Club (CYC) to lay moorings in the River Coquet. We would expect those documents to extend from the period, 1968 to the present day and include the document which describes the area of the harbour confines for which the Coquet Yacht Club are charged ground rent."

5. WHC responded on 17 February 2011. It stated that it had been waiting for the Commissioner to clarify whether it was public authority for the purposes of the Act and it had received confirmation that it was not. As such WHC said that it was not required to comply with the request.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to determine whether WHC was obliged to comply with the request under the Act.
7. Due to the nature of the information requested, the Commissioner considered there was a possibility the information could be environmental information, as defined by the EIR. The Commissioner is responsible for regulating both the Act and the EIR and he therefore considered whether WHC is obliged to comply with the request under either piece of legislation.

Reasons for decision

Is WHC a public authority for the purposes of the Act?

8. Section 3 of the Act defines public authorities as any body or person listed in Schedule 1 of the Act, designated by order under section 5 of the Act or a publicly owned company as defined by section 6 of the Act. The Commissioner is satisfied that WHC does not fall under the definition of a public authority for the purposes of the Act and that is not obliged to comply with its provisions.

Is WHC a public authority for the purposes of the EIR?

9. Regulation 2(2) of the EIR defines public authorities for the purposes of that legislation. The definition of a public authority is broader than that set out in the Act. In particular, regulation 2(2)(c) states that a public authority means:

“(c) any other body or other person, that carries out functions of public administration; or
10. The Commissioner referred WHC to his decision on case reference FER0195081, a copy of which is available through his website¹ - this related to the Merseyside Docks and Harbour Company (MDHC) and also referred to EA/2006/0083, which was a decision of the First-tier Tribunal (Information Rights)(previously the Information Tribunal) in a case involving the Port of London Authority (PLA)². In arriving at a decision, in FER0195081, on whether MDHC was a public authority for the purposes of the EIR, the Commissioner was guided by five bullet points (see paragraph 24 of that notice). WHC agreed that it met the criteria or fulfilled those functions to greater or lesser extent than either PLA or MDHC.
11. While WHC does not meet all of the criteria or fulfil all the functions referred to in FER0195081 and the Tribunal's decision in EA/2006/0083, the Commissioner is satisfied that WHA is a public authority for the purposes of the EIR. In particular the Commissioner was mindful that it does have statutory duties and the power to regulate harbour users, which he considers falls under the definition of a public authority under regulation 2(2)(c).

Is the information environmental information?

12. Although the Commissioner determined that WHA is a public authority for the purposes of the EIR, the provisions of that legislation only apply if the information requested can be defined as 'environmental information'. Regulation 2(1) of the EIR defines environmental information.

¹ http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx

² <http://www.informationtribunal.gov.uk/DBFiles/Decision/i160/PLA.pdf>

13. The request is fairly broad, in that it asked for copies of all documents, emails and other materials relating to the granting of a license (and any subsequent amendments) to lay moorings from 1968 to the present day. In order to make a decision on whether the information is environmental information, the Commissioner considered the agreement (the license referred to by the complainant) between WHA and CYC. The Commissioner's view was that if the agreement itself was environmental information then all information 'on' that document would be environmental information for the purposes of the EIR.
14. The document itself does not contain information that is overtly environmental but the Commissioner was mindful of the provisions of regulation 2(1)(c), which states that environmental information is information on:

"measures, (including administrative measures), 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 those elements."
15. The Commissioner is aware that WHC is bound by the Port Marine Safety Code (the "code")³. The code applies to all harbour authorities – ie it is not optional – and it summarises the legal duties and standards that should be maintained. While the code is primarily concerned with marine safety it provides a useful summary of the duties of harbour authorities. The Commissioner noted that the code specifically states a harbour authority must have regard to the environment in the exercise of all its powers and duties (paragraph 1.3.30).
16. Having considered the code, the Commissioner considers the purpose of WHC, as a harbour authority, is to maintain, operate, improve and conserve the harbour. In short, to look after the physical asset and to keep it fit for purpose as a harbour. Performing this duty, including managing the letting of moorings, will have an impact on the environment and therefore can be considered a measure, under regulation 2(1)(c) of the EIR, likely to affect the elements of the environment. It therefore follows that information on how WHC carries out its duty to maintain the harbour will be information on that measure and hence environmental information.

³<http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/shippingports/port/pmsc/portmarinesafetycodeintroduction>

17. It should be noted that the Commissioner does not consider that all information held by WHC is environmental information simply because its duties can have an environmental impact. For example, WHC may perform duties that do not have an environmental impact. However, in this case, the Commissioner considers that the letting of moorings and the terms under which they are let is likely to have some impact on the use of the harbour; for example the volume of vessels using it. This may have consequences for the environment and may also have an impact on other physical facilities at the harbour, which again will have some impact on the environment.
18. In summary the Commissioner considers that the mooring agreement between WHC and CYC is environmental information, as is the information on that agreement. He therefore considers that the request to fall under the provisions of the EIR.

Other matters

19. Although not central to the decision in this case, during the course of the Commissioner's investigation the complainant clarified that he is seeking information relating to the original agreement between WHC and CYC; ie his request is not limited to the period 1968 onwards.

Right of appeal

20. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. 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.
22. 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

Andrew White
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