

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 April 2013

Public Authority: Planning Inspectorate (an executive agency of the Department for Communities and Local Government)

Address: 4/11 Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Decision (including any steps ordered)

1. The complainant has requested information about a concluded planning inquiry. The Commissioner's decision is that no information is held save for that which has previously been made available to the complainant. No further action is required.

Request and response

2. On 2 April 2012, the complainant wrote to the Planning Inspectorate and requested information in the following terms:

"I've seen your email to [name redacted] regarding the above incinerator at Shrewsbury and draw your attention to section 100 of the decision document (dated 10 January 2012), which is pasted in below, where the Inspector claimed that the proposed incinerator at Halescott "would have a low risk of harm to human health".

'100. On the third main issue, I find that the proposed EWF would have a low risk of harm to human health'

The Inspector's words suggest that he either had access to data other than that presented or examined at the public inquiry which I was a Rule 6 party objector and at which [name redacted] was my expert witness, or that the inquiry process was a prearranged farce...

My Freedom of Information request is for the evidence that persuaded the Inspector to assert that there'd be a low risk to health from the proposed incinerator."

3. In a separate letter to the Planning Inspectorate the complainant stated that the purpose of his request was as follows:

"The purpose of my FoI request is to either:

1. obtain copies of previously undisclosed documents that have apparently persuaded [the Inspector] that there's a "low risk of harm to health"

or

2. obtain written confirmation that [the Inspector] has no such additional evidence and made his decision based solely on evidence presented either prior to the Inquiry or during cross examination – none of which showed evidence of lack of harm to health."

4. The Planning Inspectorate responded on 22 June 2012. It stated that the only information it held was the documents from the appeal. As the complainant was a Rule 6 party he would have been presented with all these documents during the inquiry. It stated it would be willing to provide this documentation if the complainant wished, but stressed that there was no other information held by the Planning Inspectorate which the complainant had not already seen.
5. The Planning Inspectorate reviewed its position on 11 July 2012 and confirmed that the original decision was being upheld.

Background to case

6. The dispute in this case is a planning inquiry decision over an incinerator. The complainant had 'Rule 6' status, which is taken from Rule 6(6) of the various rules governing inquiry procedures. This is the name given to interested parties who wish to submit a statement to a planning inquiry case.¹
7. In his letters to the Planning Inspectorate and the Commissioner, the complainant has made it clear that he disagrees with the decision made at the planning inquiry. These letters describe at length the
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¹ http://www.planningportal.gov.uk/uploads/pins/guide_rule_6.pdf

complainant's views as to the perceived faults of the Inspector and the reasons why the decision is unreasonable. This has led the complainant to suspect that the Inspector had evidence that he has not seen which influenced the eventual decision or that the decision was reached in spite of the evidence presented to the inquiry.

8. As the complainant has Rule 6 status, he would have received all the evidence of the main parties and access to documents submitted by third parties.

Scope of the case

9. The complainant contacted the Commissioner on 24 July 2012 to complain about the way his request for information had been handled.
10. Following consideration of subsequent clarification sent to him by the complainant, the Commissioner undertook to investigate this complaint. He considered the scope of the case to be whether the Planning Inspectorate holds any further relevant information which was not provided at the inquiry.

Reasons for decision

11. Regulation 5(1) of the Environmental Information Regulations states that:

"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."

12. The Planning Inspectorate has confirmed to the Commissioner that no further information is held. It further directed the Commissioner's attention to The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000². This confirms that all Rule 6 parties will receive copies of documents placed before the Inspector.
 13. The Commissioner has seen no information or evidence – and been provided with no persuasive argument - which points to the Planning
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² <http://www.legislation.gov.uk/uksi/2000/1625/article/3/made>

Inspectorate being likely to hold further information. This, together with the requirements of rule 6, is sufficient for him to decide – on the balance of probabilities – that the Planning Inspectorate does not hold further information relating to the request other than the appeal documents.

14. The complainant's correspondence has made it clear that he is not concerned with obtaining the appeal documentation. So in this instance there is no information held by the Planning Inspectorate that must be disclosed.
15. The Commissioner wishes to stress that he is not a planning expert but, in any event, his remit in this case is restricted to whether the EIR have been properly implemented. Any concerns over the veracity or integrity of a planning inquiry decision are beyond his remit and will not be considered. The complainant's view is that there must be further information held to reach such a conclusion or the Inspector was mistaken. The Commissioner considers that the judgement for any mistakes is beyond his remit, as are any judgements for whether there have been breaches of planning inquiry rules.

Summary

16. The Commissioner's decision is that no further information relevant to the subjective terms of the complainant's request is held. No further action is required.

Other matters

17. Under regulation 5(2) of the EIR a public authority is obliged to response to a request "no later than 20 working days after the date of receipt of the request". As the Planning Inspectorate took over 2 months to provide a response, it has breached regulation 5(2) of the EIR.

Right of appeal

18. 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

19. 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.
20. 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

Alexander Ganotis
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