

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 February 2017

Public Authority: Exeter City Council
Address: Civic Centre
Paris Street
Exeter
EX1 1JN

Decision (including any steps ordered)

1. The complainant has requested information relating to the ownership of land associated with a hedge. Exeter City Council disclosed information but the complainant disputed that all the relevant information had been provided.
2. The Commissioner's decision is that Exeter City Council has disclosed all the relevant information it holds and complied with regulation 5(1) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 21 March 2016, the complainant wrote to Exeter City Council (the "council") and requested the following information:

"Will you please inform me of the actual boundary line of the 1 acre of land which Estates sold to [names redacted] in 1972 from Brookfield Cottage Clapperbrook Lane Alphington to the Alphin Brook?

Is it on the inside of the hedge in which case the hedge was not disposed of in 1972 or is it against the road?

Land Registry shows it on the inside of the hedge but your confirmation would be appreciated as the hedge would be maintained in perpetuity by ECC."

5. The council responded on 11 April 2016 and disclosed the requested information to the complainant.
6. Following an internal review the council wrote to the complainant on 25 May 2016. It stated that all the relevant information held had been disclosed.

Scope of the case

7. On 3 September 2016 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that her investigation would consider whether the council had disclosed all the relevant information it holds.

Reasons for decision

Regulation 5 – duty to provide environmental information

9. Under regulation 5(1), public authorities holding environmental information have a duty to make it available on request.
10. In this case the council disclosed the requested information but the complainant considers that it has failed to provide all the relevant information that it holds.

11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. To assist with this determination the Commissioner sought the council's response to a range of standard questions she puts in such scenarios. The questions and summaries of the council's responses are reproduced below.

What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?

14. The council confirmed that manual search was carried out to locate the Conveyance dated 29th September 1972. It explained that the Highway adoption register information (Highway Terrier) was also obtained electronically from Devon County Council's database to which the Council has a link. It further confirmed that the Land Registry Title DN187510 was also downloaded from the HM Land Registry business e-services portal to which the council subscribes. The council explicitly confirmed that these documents constitute the relevant information held and that they have been provided to the complainant.

If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

15. The council confirmed that no electronic data is held.

Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

16. The council confirmed that no relevant information had been deleted or destroyed.

What does the council formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the council describe the way in which it has handled comparable records of a similar age?

17. The council confirmed that its corporate retention schedule states conveyancing deeds should be destroyed 12 years after closure/from termination of tenancy.

Is there a business purpose for which the requested information should be held? If so what is this purpose?

18. The council confirmed that there is no business purpose to keep the information. The Council maintains records of the areas for which it is responsible for and which it owns (in this case the neighbouring areas).

Are there any statutory requirements upon the council to retain the requested information?

19. The council stated that there are no such statutory requirements as it does not own the land identified in the request.
20. In their submissions to the Commissioner the complainant has disputed the content of the council's disclosures and has asked the Commissioner to adjudicate on the substantive issue of ownership of the land. The council has confirmed that the complainant has been in correspondence in relation to this issue for some time and that the question of ownership is a matter of disagreement between the parties.
21. The Commissioner has explained to the complainant that it is not her role to determine ownership of the land. She has confirmed that, in this matter, her duty is solely confined to establishing whether the council has provided all the relevant information it holds and that what has been disclosed accurately reflects what is held by the council.
22. The Commissioner acknowledges that the question of ownership of the land is a matter of genuine concern for the complainant, however, she does not consider that the EIR is an appropriate forum for seeking redress in this matter. The Commissioner has advised the complainant that there are other remedies available for progressing their concerns in this regard.
23. Whilst the complainant has consistently sought to contradict the council's position with regard to the question of ownership of the land, the Commissioner has not been presented with direct evidence in which challenges the council's confirmation that all relevant information has been disclosed. The Commissioner also has no reason to doubt that what has been disclosed to the complainant accurately reflects the information held by the council.

24. Having considered the relevant facts the Commissioner has determined that, on the balance of probabilities, the council has disclosed all the relevant information it holds and complied with regulation 5(1) of the EIR.

Right of appeal

25. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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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