

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

**Decision notice**

**Date:** 23 August 2018

**Public Authority:** Ministry of Housing, Communities and Local Government

**Address:** 2 Marsham Street  
London  
SW1P 4DF

**Decision (including any steps ordered)**

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1. The complainant has requested from the Ministry of Housing, Communities and Local Government (MHCLG)<sup>1</sup> a copy of the index of the retained casework for land and properties belonging to a number of public authorities.
2. The Commissioner's view is that the complainant's request was not sufficiently clear, therefore MHCLG was under an obligation under regulation 9 of the EIR to contact the complainant and seek clarification of the request. In failing to do so, MHCLG breached regulation 9 of the EIR. It is now required to remedy this breach by contacting the complainant and seeking clarification about his request.
3. The Commissioner requires MHCLG to take the following steps to ensure compliance with the legislation.
  - Write to the complainant seeking clarification of his request for "a copy of just the index of the retained casework".

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<sup>1</sup> At the time of the request, Department for Communities and Local Government. For the purpose of this Decision Notice, the Commissioner will use the acronym MHCLG, except when quoting parts of the original correspondence.

4. MHCLG 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 pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 29 June 2017, the complainant wrote to MHCLG and requested information in the following terms:

*"I specifically request a copy of just the index of the retained casework for all lands and properties belonging to the former boroughs of Bridport, Dorchester and Lyme Regis, the urban district of Sherborne and the rural districts of Beaminster, Bridport, Dorchester and Sherborne in Dorset and the rural district of Axminster in Devon, prior to their dissolution in 1974."*

6. MHCLG responded on 7 July 2017. It stated that *"The Department does not hold an 'index of the retained casework for all lands and properties etc...' We only hold an index of **all** DCLG records which covers hundreds of thousands of entries."* MHCLG advised the complainant to *"...contact the relevant local authorities for the information you seek, or else the National Archives"*.
7. Remaining dissatisfied with the response, on 13 September 2017 the complainant requested MHCLG to conduct an internal review of its handling of this request and another one submitted prior to this.
8. On 10 January 2018 MHCLG provided a joint internal review outcome and responded in the same correspondence to all the complainant's requests, stating that it *"considers this matter to be closed and we will not be entering into any further correspondence relating to it."*

## Background of the case

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9. The complainant initially contacted MHCLG on 17 April 2017 requesting a catalogue relating to the casework for all land and properties belonging to the named public authorities (former local administrative units).
10. MHCLG rejected the complainant's request relying on regulation 12(4)(b) of the EIR as it considered his request manifestly unreasonable because it would place a considerable burden on MHCLG to locate and extract the information required, if it exists at all.

11. In addition to the present complaint, which is the subject matter of this decision notice, on 9 July the complainant wrote to MHCLG and requested to visit its archive and have personal access to it in order to research the requested information.
12. MHCLG responded by stating that it does not have facilities for members of the public to access its archives in person. Furthermore, its database is only accessible to its personnel with appropriate clearance, due to the fact that this database contains various types of records, some of which are sensitive.

### Scope of the case

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13. The complainant contacted the Commissioner on 3 December 2017 to complain about the way his request for information had been handled. The complainant's concern was primarily that he did not accept that MHCLG did not hold information within the scope of his request for "*a copy of just the index of the retained casework*".
14. In the course of the correspondence with the Commissioner, the complainant confirmed that he wished the Commissioner "*to investigate the DCLG's claim that it does not hold information requested in the **FOI request 3399889** [emphasis added by the complainant] specifically an index, sub index, catalogue or the equivalent for the casework of the mentioned public authorities.*"
15. Upon reviewing the case, the Commissioner's view was that the complainant's request for a copy of index was not sufficiently clear. Given this, she considered whether MHCLG was under an obligation under regulation 9 to seek clarification from the complainant about the request before proceeding with it.
16. The following analysis covers regulation 9 and the MHCLG's obligation to assist and advice in this specific case.

### Reasons for decision

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#### Is the requested information environmental information?

17. Regulation 2(1)(c) of the EIR provides that any information on measures such as policies, plans and activities which are likely to affect environmental elements and factors listed in regulations 2(1)(a) and (b) is environmental information.

18. The Commissioner considers that, given that the request relates to management of lands and properties belonging to the former administrative units in question, it falls under the EIR in accordance with regulation 2(1)(c).

### **Regulation 6 – Form and Format of Information**

19. Regulation 6(1) provides:

*"Where an applicant requests that the information be made in available in a particular form or format, a public authority shall make it so available, unless –*

- (a) It is reasonable for it to make the information available in another form or format; or*
  - (b) The information is already publicly available and easily accessible to the applicant in another form or format."*
20. The Commissioner notes that the complainant through the wording of the request, seeking "an index of the casework", expressed a preference in relation to the format of the information he wants to receive.
21. The Commissioner has published guidance on regulation 6<sup>2</sup>, where it is stated that the use of the phrase 'format' means that the requester may specify not only the physical form but also how the information is configured or arranged within that form.
22. Whilst it is clear that the complainant requested the information in a specific format, it was not clear from the wording of the request whether the complainant expected that MHCLG already held an index, or whether he wished MHCLG to extract the information from their database and organize it for him in an index.
23. In circumstances where, as in this case, the request is not clear, the Commissioner considers a public authority in receipt of such a request to be under a duty to provide advice and assistance to the requester by seeking clarification of their request.

### **Regulation 9 – duty to provide advice and assistance**

24. Under regulation 9(1) of the EIR a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1639/form-and-format-of-information-eir-guidance.pdf>

25. The Commissioner has published guidance on interpreting and clarifying requests<sup>3</sup>, where it is stated that public authorities must interpret information requests objectively. They must avoid reading into the request any meanings that are not clear from the wording.
26. The guidance provides that if the authority finds there is more than one objective reading of the request then it must go back to the requester to ask for clarification. It should not guess which interpretation is correct.
27. Having concluded above that the formulation of the complainant's request was not completely clear and could be open to multiple interpretations, the Commissioner considers that MHCLG was under a duty to seek clarification from the complainant about his request.
28. By failing to do so, the Commissioner finds that MHCLG failed to comply with the requirements stipulated in regulation 9 of the FOIA. At paragraph 3 above MHCLG is now required to write to the complainant and seek clarification about his request.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

## Right of appeal

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29. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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 .....**

**Ben Tomes  
Team Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**