

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 17 February 2021

**Public Authority:** Huntingdonshire District Council

**Address:** Pathfinder House  
St Marys Street  
Huntingdon  
Cambridgeshire  
PE29 3TN

#### **Decision (including any steps ordered)**

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1. The complainant has requested information a proof of ownership certificate on a piece of land relating to a planning application made to the council. The council provided details which it holds on the planning application and argue that it has disclosed the certificate it holds, however the complainant disputes that this is a valid ownership certificate.
2. The Commissioner's decision is that, on a balance of probabilities, the council has disclosed the information which it holds to the complainant. She therefore considers that the council complied with the requirements of Regulation 5. She has however decided that the council did not comply with Regulation 5(2) in that it did not disclose some of the information which fell within the scope of the request within 20 working days.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. The initial request to the council was made on 28 December 2019, for:

*[Name and address redacted] died on 7 March 1989. His late son in law [name redacted] registered his death.*

*Please provide with the full names and full addresses of [name redacted] personal representatives. This information must be held on the Council Tax Vacation Forms, Electoral Roll and Local Land Charges Register of that unregistered property.*

*I have discovered that his G.P who lives in Bury used to visit [name redacted] at that unregistered property. Please provide me with the name and address of his G.P or point me in the right direction to locate the names and addresses of any G.P's who live in [address redacted]. This information must be held in the Electoral Roll Register of that parish.*

*Should you require clarification on any points please feel free to contact me.*

5. The council clarified that it does not hold this information, however the complainant's disputed this and argued that it would hold it.
6. Following a long chain of correspondence where the council sought to clarify exactly what information the complainant was seeking in respect of this, the complainant clarified that the information which he believes the council holds will be held on a specific planning application. On 27 April 2020 the council responded, stating that it was still unclear what information the complainant was requesting. The complainant wrote back on 28 April 2020 clarifying that:

*Huntingdonshire District Council must hold the Ownership Certificate of this Outline Planning Application.*

*1. Did the Applicants [name redacted] or their Agent complete and sign and date the relevant Ownership Certificate and if so was it an A,B C or D?*

*2. What checks and balances were conducted by Huntingdonshire District Council to establish beyond any reasonable doubt the Applicants the [name redacted] had signed and dated the correct Ownership Certificate?*

*The relevant certificate must be completed, signed and dated. Only one certificate should be completed.*

7. The council responded on 13 May 2020, stating:

*"This matter has already been addressed in the emails sent to you on 15/01/20, 10/03/20 and 08/04/20."*

8. The Commissioner notes that on 10 March 2020 the council had disclosed a copy of the planning application to the complainant, which included, in section 25:

*"Ownership Certificates and Agricultural Land Declaration*

*CERTIFICATE OF OWNERSHIP - CERTIFICATE A - Town and Country Planning (Development Management Procedure) (England) Order 2015 Certificate*

*under Article 14 I certify/The applicant certifies that on the day 21 days before the date of this application nobody except myself/the applicant was the owner\* of any part of the land or building to which the application relates, and that none of the land to which the application relates is, or is part of, an agricultural holding\*"*

9. The section had been completed by an agent of the person declaring themselves as the landowner.

10. On 14 May 2020 the complainant wrote to the council stating:

*"It is critical that I am provided with a copy of the Ownership Certificate for Planning Application [reference redacted]."*

11. The council responded on 18 May stating:

*"This is available on Public Access within the documents section for the above planning application, see section 25 of the Planning Application. This is not a redacted document."*

12. On 19 May 2020 the complainant wrote back to the council stating:

*"I refer to your email dated 18 May 2020 16:03*

*I have viewed Section 25 of the Application Form is both incomplete and not fit for purpose. The legal owner of the land is my late father in law [name redacted] who died intestate on 7 March 1989.*

*It is critical that I am provided with a copy of the Ownership Certificate for Planning Application [reference redacted]."*

## Scope of the case

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13. The complainant contacted the Commissioner 7 March 2020 to complain about the way his request for information had been handled.
14. In essence, the initial request sought details of the information which the council should hold following the checks which the complainant considers the council should have carried out when it received the relevant planning application. When this initial request was questioned further by the council the true nature of the request was eventually drawn out by the council.
15. The complainant considers that the information which was provided to him does not amount to a legal proof of ownership of the land in question. He therefore considers that the council will, or should, hold more information given that he considers that it is necessary for it to establish land ownership before making a decision on the planning application.
16. The council considers that the information which the complainant requested is the ownership declaration/certificate, which, it argues, is publicly available. It accepted however that it did not clarify to the complainant that it was applying the exemption in Regulation 6(1)(b) (information already accessible to the requestor) in its response of 18 May 2020).
17. The complainant does not dispute that the information highlighted by the council is available. He disputes that that information demonstrates the true ownership of the land in question and argues that the council is under an obligation to have carried out further checks. He therefore wants the details of the owners of the land which the council established when carrying out those checks.
18. During the course of the Commissioner's investigation, she noted that the council holds two emails wherein the ownership issue is discussed with the Agent; an email from the council to the agent requesting clarification of ownership is dated 23 April 2020, and the agent's response, dated 28 April 2020. These two sentences are relevant to the question of ownership and the checks and balances carried out by the council to determine that the ownership declaration was correct. The council had raised these issues with the agent as a result of the complainant initial requests and concerns about the relevant planning application.
19. The Commissioner recognised that these sentences fell within the scope of the complainant's request as received by the council on 28 April 2020. She therefore contacted the council and highlighted this. The

council therefore disclosed this information to the complainant on 16 February 2021.

20. The Commissioner considers therefore that the complaint is that the council holds more information than it has provided to the complainant in response to his request for information.

## **Reasons for decision**

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### Regulation 12(4)(a)

21. Regulation 12(4)(a) provides that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
22. In effect the Commissioner must consider whether further information is held by the council which has not been disclosed to the complainant in response to his request for information.
23. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
24. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
25. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority (and/or the complainant) which is relevant to her determination.
26. During the course of her investigation, the Commissioner asked the council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how it established whether or not it held further information falling within the scope of the request.

The complainant's position

27. The complainant believes that the individuals who have sought planning permission on the land cannot make any claims to own the land at the current time.
28. His argument is that the council is under a duty to determine the ownership of the land when accepting a planning application for determination.
29. He has looked into the requirements for councils when considering such applications and believes that the council should hold a certificate of ownership on the land. He also believes that it will have carried out background checks to determine whether the individual declaring themselves as the owner of the land does actually have legal ownership.
30. The council disclosed a copy of the planning application, completed on behalf of the stated owners by their agent. The owners are simply described as '*the [name] family*'. The complainant believes that the council will hold the name and address of the family claiming to be the owners of the land for the purposes of the application.

The council's position

31. Rather than strictly going through the questions asked by the Commissioner, the council provided an explanation as to why it does not hold the information requested by the complainant. In effect, this boils down a misunderstanding or a misplaced belief by the complainant as to the level of checks which the council does on the ownership of land when it receives a planning application.
32. The council argues that section 25 of the application form is the certificate of ownership. The complainant has been provided with the relevant application form, and section 25 was included within this.
33. The council also argues that it takes such declarations in good faith. It states that it generally relies of the truthfulness of the owners to declare their ownership of the land in question in section 25. It therefore does not carry out further checks on land ownership unless a declaration is disputed.
34. In a response to an associated request from the same complainant, again relating to the ownership of land, the council stated that;

*'Planning Services do not hold records of land ownership, the applicant/agent is required to fill out an application form with the correct ownership details. The declaration section requires the applicant/agent to confirm that the information on the forms are to*

*their knowledge true and accurate. Please note the council will not disclose third party personal details.*

*... Unless there was a query raised as to the ownership at the time (before the application had been determined) disputing the submitted information relating to this application the LPA would have had no reason to query this'*

35. It says that once it became clear that the complainant disputed ownership for this application, it contacted the agent, who demonstrated that the application was appropriate, and the council was therefore satisfied that it was appropriate to continue with the planning process. It clarified that:

*"The Local Planning Authority have been shown papers in the office relating to the dispute between [the complainant] and the Applicant as part of the Local Planning Authority undertaking due diligence checks regarding the validity of the Ownership Certificate when the issues were first raised by [the complainant] some time ago*

36. This occurred after the request being received and considered, however, and so falls outside of the scope of this decision notice. The council also disclosed sections of two emails to the complainant on 16 February 2021 as noted as noted in the scope section of this decision notice.

37. The council therefore argues that:

*"For the purposes of a planning application, the Applicant has provided all they are required to do and Huntingdonshire District Council, as Local Planning Authority, have done all we need to do with regards to questioning the submitted Ownership Certificate."*

38. It argues therefore that it holds no further information falling within the scope of the request beyond the section 25 certificate of the details of the ownership of the land in question.

#### The Commissioner's conclusions

39. It is important to note that the complainant is aware of who the people making the claims of ownership are. The Commissioner considers that his request is based upon the premise of identifying flaws in the approach of the council in determining ownership of the land, and in obtaining evidence as to whether any fraud is occurring in relation to the land in question.

40. The Commissioner recognises that the complaint, in essence, revolves around a dispute between the parties as to whether the documentation which the council relies upon to identify the owner of a plot of land is an appropriate way of establishing ownership.
41. The council's argument is that if a section 25 certificate is completed this will suffice to determine ownership in the majority of cases. It does not carry out further background checks unless there are specific reasons raised which bring into question the validity of the declaration.
42. The complainant disputes that this approach is correct. He argues that the council is not correct to allow a planning application to go ahead without first establishing the ownership of the land.
43. The clarified request was for the ownership certificate, confirmation of which ownership certificate was signed, and details of the checks and balances which are in place. The council has provided that information to the complainant in respect of these questions.
  - It has provided the name of the individual on the ownership certificate (in this case, this is the name of the owner's agent, together with the applicant being stated as '*the [name redacted family]*').
  - It has provided a copy of the certificate which was submitted (certificate A), and
  - it has explained that in the vast majority of cases it carries out no further checks on the ownership of the land and that it had not done so up until the request was received and responded to in this case.
  - It has further explained to the Commissioner that it did carry out further checks on the validity of the claim for the relevant planning application with the agent after receiving the complainant's concerns. It had a meeting with the agent, who showed the council the evidence he was relying upon during the meeting, but no notes were taken at that time. This, however, occurred after the complainant's request for information had been considered and responded to. The council has therefore argues that it has disclosed the information which it holds falling within the scope of the complainant's request for information.
  - It has disclosed two sections of an email chain which relate to ownership checks, which were raised following the complainant's initial correspondence with the council.



44. It is not the Commissioner's role to determine whether the documentation relied upon by the council is legally correct, nor whether it is correct to go ahead with considering the planning application of the basis of the evidence it holds. If it relies upon section 25 declaration to demonstrate ownership of the land, then the provision of the same documentation to the complainant will meet its obligations in respect of the EIR.
45. Similarly, if the council has described the checks and balances which it has in place to determine the ownership of land then it has complied with the requirements of the Regulations. All the council needed to do to comply with this part of the request is to describe the approach it takes to verify ownership, and to provide the complainant with the information it holds in this respect. This, it has done in stating that it does not make checks on ownership unless the ownership declaration is disputed, and in disclosing the information which it does hold.
46. If the complainant disagrees that the council's approach is correct, he is able to take legal advice as to how to challenge the council's position further. The Commissioner has no powers to consider such issues.
47. The questions which the Commissioner must consider are therefore:
  - a) Has the council provided all of the information which it holds which responds to the questions specified by the complainant?
  - b) Has the council demonstrated that it has done appropriate searches and/or has provided a sufficient explanation of its processes in order to state, on a balance of probabilities, that it does not hold any further information which falls within the scope of the request?
48. Having considered both the arguments of the council, and of the complainant in this instance, the Commissioner has decided that, on a balance of probabilities, the council has provided the information which it holds to the complainant in relation to the terms of his request for information.

**Regulation 5(2)**

1. Regulation 5(1) provides that '*...a public authority that holds environmental information shall make it available on request.*'
2. Regulation 5(2) provides that information shall be made available under paragraph 5(1) as soon as possible and no later than 20 working days after the date of receipt of the request.

3. The complainant clarified his request for information on 28 April 2020, requesting details of the checks and balances carried out by the council regarding the ownership of the land.
4. The council disclosed relevant sections of two emails to the complainant on 15 February 2021.
5. This falls outside of the period of 20 working days required by Regulation 5(2).
6. The Commissioner has therefore decided that the council did not comply with the requirements of Regulation 5(2).

## Right of appeal

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7. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

8. 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.
9. 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**  
**Head of FoI Casework and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**