

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 November 2007

Public Authority: Sutton and East Surrey Water plc
Address: London Road
Redhill
Surrey
RH1 1LJ

Summary

The complainant requested all information evidencing what was discussed in a particular meeting the public authority attended. The public authority informed the complainant that it did not hold any information, but the complainant did not accept this position. The Commissioner upheld the public authority position that no information was held but found that it had responded later than 20 working days after receipt of the request.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

The Request

2. The complainant has made various requests relating to alleged works carried out by the public authority in Harrow Road West. The request, which is the subject of this Decision Notice, was made on 9 May 2006, when the complainant wrote to the public authority informing it that he had seen a letter dated 12 April 2006 from the public authority's solicitors. The complainant stated that this letter referred to a meeting having taken place between the public authority and the Highways Authority. He then requested the following information in relation to that meeting:
 - 'one A4 copy of any and all document(s) contemporaneously evidencing what was "discussed" in the said meeting'

The Investigation

Scope of the case

3. On 12 May 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant raised various issues and quoted various separate regulations in the EIR.
4. The Commissioner understood that there were two main issues of complaint, which he could consider. He therefore wrote to the complainant on 16 May 2007 seeking confirmation that his complaint concerned the following aspects:
 - the public authority has not provided any information in response to this request
 - the public authority has not provided advice and assistance in relation to this request
5. The complainant wrote to the Commissioner on 17 May 2007 stating that he reserved his position in all respects and wished to make no observations whatever, beyond what he had already said. The Commissioner therefore had no alternative other than to proceed with his investigation on the basis of his understanding of the complaint as set out at paragraph 4 above.
6. It was also necessary for the Commissioner to consider whether Sutton and East Surrey Water plc was a public authority for the purposes of the EIR and whether the requested information was environmental. If neither of these was the case, then Sutton and East Surrey Water plc would have no obligation to respond to the request at all.

Chronology

7. On 31 May 2007, the Commissioner wrote to the public authority asking it to:
 - a) Confirm whether it accepted that the request was for environmental information and, if not, explain why
 - b)i) Confirm whether it held the environmental information requested; and
 - b)ii) If so, confirm whether it would provide the information to the complainant or cite an exception in the EIR considered relevant to withhold the information.
8. On 29 June 2007, the public authority wrote to the Commissioner providing the following information:
 - a) Confirmation that it accepted that the requested information was environmental
 - b) Confirmation that it did not hold the information and was therefore unable to disclose it in accordance with Regulation 12(4)(a) of the EIR.

9. The Commissioner asked the public authority to issue a response to the complainant, which the public authority did on 30 July 2007, reiterating the points conveyed at paragraph 8 above.
10. On 9 August 2007, the Commissioner wrote to the complainant asking him whether the response he now had from the public authority resolved his complaint. The complainant responded to the Commissioner in a fax of 10 August 2007, stating that he required a Decision Notice to be issued.
11. On 28 August 2007, the Commissioner wrote to the public authority requesting the following information:
 - 1) whether it was clear what meeting the complainant was referring to
 - 2) if so, could it explain when this meeting took place and what the purpose of the meeting was
 - 3) whether notes of the meeting were made
 - 4) if not, whether there was a reason why not and whether it was normal procedure to record notes of such a meeting
 - 5) if the notes were destroyed, could the public authority explain when they were destroyed and, if applicable, provide a record of destruction
12. On 10 September 2007, the public authority wrote to the Commissioner providing the following information:
 - 1) it understood the meeting to be Surrey County Council Streetworks Co-ordination meeting
 - 2)a) this meeting is held every three months between the Highways Authority, utilities and other parties carrying out public highway works in the Surrey County Council area
 - 2)b) the meeting is held to ensure that all parties intending to excavate in the public highway co-ordinate their works to minimise disruption
 - 2)c) the particular meeting at which the scheme of interest to the complainant was tabled was held on 6 January 2006
 - 3) no notes were made by the public authority at that meeting
 - 4) notes would only be made if other organisations' schemes affected the public authority's own works
13. The public authority made no comment on whether the meeting notes had been destroyed in response to element 5 of paragraph 11 above. However, the public authority had already confirmed at point 4 of paragraph 12 above that no meeting notes were made. In the public authority's view, it was therefore unnecessary to confirm whether notes, which had not been generated, had been destroyed or not.

Analysis

Is the organisation a public authority under the EIR?

14. The Water Industry Act 1991 provides that water undertakers are appointed either directly by the Secretary of State or indirectly by the Director General of Water services, who is instructed to do so by the Secretary of State. The water undertakers, of which Sutton and East Surrey Water is one, can have their appointment terminated or have conditions attached by those same people. Therefore they can be said to be appointed to administer the public water supply on behalf of the government and fall within the definition of a public authority set out in Regulation 2(2)(c) of the EIR. This Regulation states that -

“2(2)(c) public authority means...any other body or other person, that carries out functions of public administration.”

15. Water undertakers are appointed and regulated by a government department and, under the Water Industry Act 1991, have public responsibilities relating to the environment. As such, Sutton and East Surrey Water could also fall within the definition of a public authority set out in Regulation 2(2)(d)(i) of the EIR. This Regulation states that -

“2(2)(d) public authority means...any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –

(i) has public responsibilities relating to the environment.”

Is the information environmental?

16. The Commissioner would normally make a decision on whether or not information is environmental based on an assessment of the actual information in question. However, in cases where he accepts that no information is held, this will not be possible. In these cases, the Commissioner may make an assessment based on the nature of the request and the type of information which might be expected to be identified if any information was held.
17. In this particular complaint, point 2)b) of paragraph 12 above explains that the purpose of the meeting was to enable all parties intending to excavate in the public highway to co-ordinate their works in order to minimise disruption. For the meeting to achieve this purpose, it would have been necessary to discuss planned excavations of the public highway. Any notes of the meeting would therefore consist of information on activities i.e. planned excavations likely to affect the land, being one of the elements of the environment. This information would fall within the definition of environmental information provided by 2(1)(c) of the EIR. This extract of the EIR can be found in the legal annex to this Decision Notice.

Is the information held?

18. The Commissioner is satisfied that the meeting, the subject of the request, was a co-ordination meeting held on 6 January 2006 as described at paragraph 11 above. He accepts that the public authority would only make notes if other organisations' schemes affected the public authority's own works. He is satisfied that this was not the case in relation to this meeting and therefore it was not necessary to make notes. As no notes were made of the meeting, it was not possible for the public authority to provide the complainant with information evidencing what was discussed at the meeting.

Timing of refusal

19. Whilst this issue was not specifically raised by the complainant, the Commissioner notes that the public authority did not respond to the complainant's request of 9 May 2006 until 30 July 2007. This was not within the 20 working days stipulated in the EIR.

Advice and assistance

20. The complainant believes that the public authority has not provided him with adequate advice and assistance to gain access to the information sought. The complainant has not provided the Commissioner with any previous response to the request to that which the public authority issued on 30 July 2007. In that response, the public authority informed the complainant that the information was not held. Whilst that response was late (dealt with at paragraph 13 below), the Commissioner believes that the public authority has provided adequate advice and assistance in relation to this request.

The Decision

21. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the EIR:
- the public authority was correct to state that it did not hold the information and could therefore not disclose it in accordance with Regulation 12(4)(a)
 - the public authority provided adequate advice and assistance in accordance with Regulation 9(1)
22. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the EIR:
- the public authority issued a refusal to the complainant later than 20 working days after the date of the request, which was not in accordance with Regulation 14(2)

Steps Required

23. The Commissioner requires no steps to be taken.

Right of Appeal

24. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 12th day of November 2007

Signed

**Jane Durkin
Assistant
Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal annex

Regulation 2(1) In these Regulations –

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) 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;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

Regulation 2(2) Subject to paragraph (3), “public authority” means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
 - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
 - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or

(iii) provides public services relating to the environment.

Regulation 9(1) 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.

Regulation 12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(a) it does not hold that information when an applicant's request is received;

Regulation 14(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.