

Freedom of Information Act 2000 (Section 50)
Environmental Information Regulations 2004

Decision Notice

Date: 16 May 2011

Public Authority: English Heritage
Address: The Historic Buildings and Monuments
Commission for England
Kemble Drive
Swindon
SW2 2GZ

Summary

The complainant submitted a request to English Heritage for information relating to the Norwich Site Allocations Plan. English Heritage failed to respond to this request within 20 working days. Subsequently English Heritage confirmed that the requested information fell under the Environmental Information Regulations 2004 and provided the requested information to the complainant. The Commissioner finds that English Heritage breached regulation 5(2) by failing to make the requested information that it held available within the statutory time for compliance. He does not require English Heritage to take any further action.

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. On 29 October 2010 the complainant made the following request to English Heritage headed "New FOI Norwich cathedral precinct":

"Please action this new FOI Request apparently not passed to you via other EH staff some time ago now

Please do not delay action.

Please do not allocate it to [first named person] about whom I have an informal complaint.

*1 Planning and Devt have copy of MINE [second named person] **agrees but says that she cannot find it because my files have been moved around***

This is nonsense as the copy was posted to [third named person] who holds it to HIS file and not any other (legal) files at issue.

Where is that copy of mine from EAST Files?

1.1 [fourth named person] accessed to me a plan + Letter I had sent to [fourth named person] 2007 This is the same plan as was sent to [third named person] Autumn 2005 Please act because [fifth named person and title] promptly sent HIS copy to me without all your Swindon / Legal staff hassle obstructing all P and D Team EAST REGION FILES' copy.

2 No other P and Devt copy has come to me at any time at all. Autumn 2005 FOI [sixth named person] focus was on 1 site and Heritage/ Cathedrals Team staff at that time, only. I have that copy eg [seventh named person] and [eighth named person].

I WOULD NOT RE REQUEST COPY I DO HAVE from THOSE 2 TEAMS

3 On 07.05.2009 [third named person] stated to me by letter that he monitors Norwich Cathedral Precinct BUT no such copy has ever been sent to me by anyone at all .

4 NEW sites of 4 very large areas of land are now at issue so please access all the PLANNING AND DEV'T TEAM FILES as to all and any part of their remit which as you know is fully stated on the web as to the whole of the Precinct.

*5 Thank you via [sixth named person] for all HERITAGE / CATHEDRALS TEAM copy FERRY LANE, STABLE RANGE single site to **which [second named person] has NOT at all contributed via Planning and Dev't Team Files / 'monitoring' .***

6 LIAISING with the Public is a statutory Duty for EH let alone the FOI remit I now apply as to silence and on the new matters. Nonetheless staff have complained as if vexatiousness applied to your NON action of FOI Request from May 2009 unresolved save as to some copy via [fourth named person] London Governance.

7 Sorry but the City Council site plans will not download but since EAST are 'monitoring' they say so they should know all about the relevant files' copy?"

This email appears to have been prefaced or post-scripted with the following which refers to specific planning sites:

"29.10.2010 TO [named person] HEAD OF SWINDON FOI , ENGLISH HERITAGE NEW FOI REQUEST NORWICH CATHEDRAL PRECINCT & M001 002 003 004 PLANNING SITES."

3. On 8 November 2010 English Heritage emailed the complainant to say that it had previously investigated all the issues raised and that there was nothing further that could be provided. English Heritage emphasised that an internal review had been conducted in October 2009 where its responses had been reviewed.
4. On 10 November 2010 the complainant questioned this response and referred directly to certain site numbers relating to the Cathedral precinct.
5. On 18 November 2010 English Heritage referred the complainant to its comments in the email of 8 November 2010.
6. On 22 November 2010 the complainant emailed English Heritage and restated the areas she wished it to provide her with information about.

The Investigation

Scope of the case

7. On 18 January 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider her request of 29 October 2010. The Commissioner subsequently made various protracted attempts to clarify the extent of the complaint with the complainant but he remained unclear as to the focus of that complaint. He was only able to determine that English Heritage's delay

in responding was an issue and, in the absence of further clarification, has consequently taken forward this issue alone.

8. During the course of the Commissioner's investigation English Heritage revised its position and acknowledged that it did hold information falling within the scope of the request and provided this to the complainant. However, the complainant remained dissatisfied with English Heritage's response to her request. Although the Commissioner was aware of a general discontentment from the complainant, he was only able to identify the matter of the delayed response. As a result this decision notice focuses purely on this particular issue.

Chronology

9. On 23 February 2011 English Heritage received an email from the complainant which "tied the [M] numbers to actual sites".
10. On 11 March 2011 English Heritage responded to the complainant. In this email English Heritage explained that, after the above clarification, it had been able to identify that the information the complainant was referring to was the Norwich Site Allocations Plan. It was pointed out that this information related to English Heritage's responses to Norwich City Council in 2010 that was not in existence when the complainant had made her previous requests in 2009. For that reason it had been treated as a new request. The requested information was attached and contained English Heritage's responses to the draft Norwich Site Allocations Plan. There were more detailed comments relating specifically to the Cathedral Close sites referred to as M0001, M0002, M0003 and M0004. Finally English Heritage said that the same information was publicly available to view at Norwich City Council.
11. On 18 March 2011 the Commissioner wrote to the complainant noting her concerns that, although English Heritage had now responded to her request, it had not acknowledged the delay in the response. The Commissioner also pointed out that if the complainant was dissatisfied with its response she would need to request an internal review. However, the Commissioner acknowledged that a complaint could be made simply about the delayed response.
12. English Heritage wrote to the Commissioner on 24 March 2011 listing the chronology of the complainant's request. An explanation was given as to why there had been a delay in providing the information. At first the FOI request was seen as a complaint which amalgamated the complainant's various complaints going back to 2005. The first response made was on this basis (see paragraph 3). The four site numbers were not recognised until the email sent by the complainant in February 2011 which contained a direct quote from Norwich City

Council's site allocations plan. English Heritage said that it had been unable to make this connection previously.

13. Following the Commissioner's letter of 18 March the complainant reasserted her dissatisfaction with the delay in English Heritage's response to her request but gave no indication that she was dissatisfied with the information she had received. As a result the Commissioner decided to focus his investigation purely on the time issue.

Analysis

Substantive Procedural Matters

Regulation 2

14. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
15. The Commissioner considers that the information requested falls within regulation 2(1)(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 these elements". Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information requested by the complainant to be environmental information.

Regulation 5

16. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
17. The complainant submitted her request for information on 29 October 2010. English Heritage did not provide the complainant with the requested information until 18 March 2011. Consequently the Commissioner finds that it has breached regulation 5(2) of the EIR.

The Decision

18. The Commissioner's decision is that English Heritage breached regulation 5(2) by failing to make the requested information available within the statutory time for compliance.

Steps Required

19. The Commissioner requires no steps to be taken.

Right of Appeal

20. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 16th day of May 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“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;

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) 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.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.