

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 31 January 2012

Public Authority: North East Derbyshire District Council

Address: Council House
Saltergate
Chesterfield
S40 1LF

Decision (including any steps ordered)

1. The complainant requested the disclosure of information relating to how a named employee at North East Derbyshire District Council (the "NEDDC") came to a valuation of a particular plot of land that was sold to a private investment group.
2. The NEDDC refused the request on the grounds that it does not hold the information.
3. The Commissioner's decision is that, on the balance of probabilities, the NEDDC holds no information relevant to the request.
4. The Commissioner requires no steps to be taken.

Request and response

5. On 14 July 2011, the complainant wrote to the NEDDC and requested information relating to a named employee's valuation of Mickley Land – an estate sold to a private investment group:

"PLEASE PROVIDE EVIDENCE OF HOW AND WHEN THIS [valuation of] £80,000 - £135,000 WAS DETERMINED." [The complainant's emphasis].

"Why was the TOP figure not attained (£135,000)?" [The complainant's emphasis].
6. On 10 August 2011 the NEDDC responded to the request stating that the complainant was already in possession of all the information relating

to the sale of the Mickley Land (through previous responses to other requests for information) and that no further information was held.

7. On 31 August 2011 the complainant informed the NEDDC that he was not satisfied with the response and requested an internal review.
8. Following an internal review the NEDDC wrote to the complainant on 06 September 2011. It upheld its position that no information was held.

Scope of the case

9. On 02 October 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The complainant has argued that figures outlining a council valuation of land with a view to sell must be recorded as a matter of due course.
11. Therefore, the scope of this case has been to consider whether the NEDDC holds any further relevant information.

Reasons for decision

12. Regulation 12(4)(a) of EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when a request is received.
13. In cases such as this where there is some dispute as to whether a public authority holds information falling within the scope of the request the Commissioner has been guided in his approach by a number of Tribunal decisions which have used the civil standard of the balance of probabilities, i.e. whether on the balance of probabilities the Commissioner is satisfied that no further information is held.¹ In deciding where this balance lies the Commissioner will take into account the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
14. Therefore, the Commissioner will consider both:
 - the scope, quality, thoroughness and results of the searches and

¹ See *Bromley v Information Commissioner* [EA/2006/0072].

- other explanations offered as to why the information is not held.

The search

15. The NEDDC as a result of a previous investigation undertaken by the Commissioner has already informally released a large amount of information relating to the sale of Mickley Land. The Commissioner has had sight of what was previously provided to the complainant, and notes that the information follows the path of the sale from start to finish. The Council has referred the Commissioner to its previous information disclosures, and has argued that it has "*provided every scrap of recorded information*" that relates to the Mickley Land.
16. The NEDDC explained to the Commissioner that, in this case, the valuation was an employee's opinion at a time when he was responding to one of the complainant's written contentions regarding the sale of Mickley Land. The information was not recorded but an opinion framed only in the employee's head.
17. The NEDDC explained that information relating to transactions is held in files stored in both its legal and estates section. If the valuation undertaken by the employee was recorded, it would be held here. These files have already been searched and disclosed to the complainant. Bearing this in mind, and after having sight of the information that was previously disclosed to the complainant, the Commissioner is satisfied that the information is not held in these files.
18. In relation to 'why the top end of the value was not achieved', the complainant was provided with Council Committee reports and resolutions setting out why the price represented 'value for money'. This satisfies the complainant's request as far as it confirmed that the purchaser submitted the only offer in an open tender procedure. As outlined in the previous paragraph, the legal and estates files have already been searched and disclosed. Taking these factors into account, the Commissioner is satisfied that no further relevant information is held.
19. The NEDDC has provided the Commissioner with its information retention policy for inspection. After reviewing the policy, the Commissioner is satisfied that the requested information, if ever held, would have been retained by the NEDDC.
20. The Commissioner has no concerns about the quality of the searches carried out by the NEDDC. Taking into account the above points, and in the absence of any evidence to the contrary, he is satisfied that the NEDDC holds no further relevant information.

Other explanations as to why the information is not held

21. The complainant argued that members of staff at the NEDDC might be intentionally withholding information that would demonstrate gross incompetence, fraud or corruption. The complainant outlined the higher re-sale price achieved for Mickley Land by the investment group following its purchase from the NEDDC.
22. The NEDDC explained to the Commissioner that the valuation achieved by the employee was a judgement that *"did not profess to be more than an opinion"*. The employee had no responsibility to value estates and played no such role in the sale of Mickley Land. *"[I]t was a subjective opinion framed only in [named employee's] head."*
23. The Commissioner is satisfied that the valuation does not constitute recorded information and no further information is held.
24. Whilst the Commissioner has some sympathy with the complainant's concerns, taking into account NEDDC's arguments, and in the absence of any evidence that further information is held, he is satisfied that NEDDC does not hold – or has ever held – the employee's valuation as recorded information. Therefore, after considering all the information before him, the Commissioner considers that on the balance of probabilities no other relevant information is held.

Other matters

25. When the requested information is environmental, the fact that it is not held engages an exception to the duty to disclose (regulation 12(4)(a)). Informing an applicant that information is not held under the EIRs is therefore a refusal, and the provisions of regulation 14 (refusal to disclose information) apply. In this case, the NEDDC failed to properly refuse the information, breaching regulation 14.

Right of appeal

26. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

27. 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.
28. 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

Pamela Clements
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