

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

Decision Notice

Date: 26 February 2013

Public Authority: Trinity Housing Association
Address: Beechill Business Park
96 Beechill Road
Belfast
BT8 7QN

Decision (including any steps ordered)

1. The complainant requested information relating to the sale of land to Trinity Housing Association in August 2007. The Association provided some information but claimed that the remainder did not fall under the EIR because it was not environmental information. The Commissioner's decision is that the Association does hold further environmental information which is relevant to the request. Therefore the Commissioner requires the Association to consider the outstanding environmental information and issue a fresh response under the EIR.
2. The Association 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.

Background

3. The complainant requested information from the Association on 6 February 2012. Following some discussion as to whether the Association was a public authority for the purposes of the EIR, the Association responded to the complainant on 2 March 2012. There followed further correspondence between the complainant and the Association.

Request and response

4. On 31 May 2012 the complainant made the following request to the Association:

"... all documentation related to the agreed sale of [address], Crossgar by [named individual] (or if appropriate, his representatives) to Trinity HA".
5. On 8 June 2012 the Association advised the complainant that it had previously provided all the environmental information held which was relevant to his request. The Association advised that any other relevant information was not environmental information under regulation 2 of the EIR, and was therefore not accessible under the EIR. The Association stated that the exception at regulation 12(4)(a) applied, as it did not hold any further environmental information.
6. The complainant wrote to the Association on 14 June and 29 June 2012 to challenge this response, but the Association remained of the view that it had provided all the environmental information it held.
7. On 9 July 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner advised the complainant to seek an internal review before he would accept that complaint for investigation.
8. The complainant duly requested an internal review and the Association responded on 18 July 2012. The Association confirmed its view that it had provided the complainant with all the environmental information it held which was relevant to his request. The Association also provided explanatory details of the environmental information it held which it did not consider relevant to the request.

Scope of the case

9. The complainant contacted the Commissioner again on 23 July 2012 as he remained of the view that the Association held further information relevant to his request which was environmental information under the EIR.
10. The Commissioner notes that the Association has accepted that it is a public authority for the purposes of the EIR. Therefore the Commissioner is not required to make a decision on this aspect of the case. However, for clarity the Commissioner would point out that he considered the

application of the EIR to housing associations in Northern Ireland in two previous decision notices¹.

11. As indicated above the Association has not disputed that it is obliged to respond to requests for environmental information as defined at regulation 2(1)(c) of the EIR. However the EIR does not oblige the Association to consider information which is not environmental information.
12. The Commissioner put his preliminary view to the Association on 8 November 2012. The Association responded on 7 December 2012 and at this stage it appeared that the Association had interpreted the complainant's request too narrowly. Therefore in the analysis below the Commissioner has first considered the interpretation of the request, and has then moved on to consider whether any relevant information held by the Association but not provided to the complainant is environmental information under the EIR.
13. The Commissioner was assisted by an inspection of all the information held by the Association in relation to the site specified by the complainant, which took place on 21 December 2012. This comprised the contents of seven lever arch files.
14. As a result of the inspection the Commissioner further consulted the Association on 13 January 2013 to advise that he had identified certain information which he considered to be environmental information under the EIR. The Association responded to the Commissioner on 1 February 2013 advising that most of this information had been disclosed to the complainant. The Association did not however confirm whether or not it accepted the Commissioner's view that this information is environmental information under the EIR.
15. The Commissioner wishes to stress that, in considering this complaint, he has made no decision as to whether the information held by the Association should be disclosed to the complainant. The Commissioner's decision in this case relates only to the interpretation of the request, and whether the information relevant to the request falls to be considered under the EIR. The Commissioner's decision does not relate to any information which is not environmental information under the EIR.

¹ Decision notices FER152607 and FER149772, accessible at www.ico.gov.uk

Reasons for decision

Interpretation of the request

16. In its letter of 8 November 2012 the Association advised the Commissioner that it had not purchased the land from the individual named in the request, rather it had purchased the land from a company called Inishmore Properties. However the Association noted that the named individual was at the time of the sale the sole director of Inishmore Properties. Although the Association accepted that it could have clarified the request with the complainant, it did not do so. The Association advised the Commissioner that it had interpreted the request as being for any:

"documents prepared by or sent by [named individual] in his capacity as a director of Inishmore Properties or as principal of [named company which would identify the individual] to Trinity".

17. Having viewed the correspondence between the complainant and the Association it is clear that the complainant's request focused on the sale of the land to the Association in August 2007. The Commissioner sees no reason why the Association should have narrowed the scope of the request by focusing on the precise identity of the seller, particularly as the Association has acknowledged that it could have sought to clarify the request with the complainant. The Commissioner is of the opinion that authorities should engage with requesters at an early stage to clarify requests if there is any ambiguity as to the information sought.
18. In light of the above, and having inspected all the information held by the Association, the Commissioner is of the view that the Association's misinterpretation of the request led to certain information not being identified as falling within the scope of the request. The additional information identified by the Commissioner comprises nine documents, and is specified at a confidential annex to this notice. The Commissioner has gone on to consider whether any of this information is environmental information under the EIR.

Regulation 2: environmental information

19. Regulation 2 of the EIR provides the following definition of environmental information:

"...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);"

20. In the Commissioner's view the phrase 'any information... on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. The Commissioner considers a broad interpretation of this phrase will usually include information concerning, about, or relating to the measure, activity, factor etc., in question. It is not necessary for the information itself to have a direct effect on the elements of the environment, or to record or discuss such an effect. Rather, the information should be *on* something falling within these sections.
21. The Commissioner understands that the Association purchased the land in order to develop it for social housing. At the time of the sale the land contained one dwelling, and the Association planned to demolish this and build a number of new dwellings on the site. Such development would be a "measure" under regulation 2(1)(c) because it is an activity likely to affect the elements and factors referred to in 2(1)(a), ie the land and the landscape. Therefore in the Commissioner's view information relating to the purchase of the land is likely to constitute environmental information, as defined by regulation 2(1)(c) of the EIR. This is because it is information on (concerning, relating to, or about) a measure which is likely to affect the elements of the environment.

22. The Commissioner put his view to the Association, who responded as follows:

"The information in question is of a contractual nature contains legal clauses relating to the relationship of the parties in various obligations, agreements and financial provisions which do not in fact constitute environmental information as they do not amount to either a measure or an activity or affect a measure or activity which itself affects or is likely to affect a measure of the environment."

23. The Commissioner is of the view that contractual information can be considered environmental information if it concerns, relates to or is about a measure which is likely to affect the elements of the environment. In this case the Association's decision to purchase the land was based on a proposal to develop that land for housing. In addition some of the contractual information specifically concerns and relates to the development of the land. In any event, the Commissioner has identified nine documents, not all of which are of a "contractual nature".
24. The Commissioner considers that all of the information contained within eight of the documents identified constitutes environmental information. The other document is an economic appraisal. The Commissioner considers that this document does constitute environmental information since it discusses various options regarding the provision of social housing, including possible sites for development. However the Commissioner considers that the only information relevant to this request is those parts of the document which refer to the site identified by the complainant, and the fact that the price had at that time been identified.

Regulation 5: duty to make available environmental information on request

25. Regulation 5(1) of the EIR states that a public authority which holds environmental information shall make it available on request, subject to certain conditions. If the public authority wishes to refuse the request it must issue a valid refusal notice under regulation 14 of the EIR.
26. In this case the Association provided some information to the complainant, but stated that the remainder of the information held was not environmental information. The Commissioner has identified nine documents containing environmental information which were not addressed by the Association in its response to the complainant.
27. The Association argued to the Commissioner, in its correspondence of 1 February 2013, that it has already provided most of the environmental information contained in the nine documents to the complainant. The

Association argued that the EIR provides for access to information rather than documents, and referred the Commissioner to its correspondence with the complainant dated 8 and 16 February 2012. This correspondence constitutes a brief response to various queries presented by the complainant. The correspondence does not provide copies of recorded information, nor does it give any indication that it contains extracts from recorded information. The Commissioner is mindful that at this time the Association did not appear to be aware of its obligations under the EIR, and the correspondence contains no reference to the EIR. The Commissioner notes that the Association's further correspondence of 2 March 2012 did refer to the EIR, and at this stage the Association provided the complainant with some information in the form of copies of documents.

28. The Commissioner is mindful that the EIR implement the European Council Directive 2003/4/CE on public access to environmental information in the UK (the Directive). The source of the Directive is the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, known as the "Aarhus Convention". The Aarhus Convention states that public authorities shall make available "copies of the actual documentation containing or comprising such information", unless it is reasonable to make the information available in another form, or the information is already publicly available in another form. Therefore the Commissioner is of the view that a public authority may discharge its duties under the EIR by providing a summary of information if requested, but it would not be acceptable to provide a summary of information in response to a request if not asked to do so.
29. In any event the Commissioner's decision in this case relates to the complainant's request dated 31 May 2012, which was made after the correspondence outlined above. On 8 June 2012 the Association advised the complainant that he had already received copies of the environmental information it held, in response to previous requests he had made. However, it appears to the Commissioner that these previous requests were not dealt with under the EIR, and as explained above it was not clear to the complainant what recorded information the Association had provided.
30. In conclusion the Commissioner is not satisfied that the environmental information contained within the nine documents identified has been considered for disclosure under the EIR.

Right of Appeal

31. 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

32. 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.
33. 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

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