

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 October 2013

Public Authority: Fenland District Council
Address: County Road
March
Cambridgeshire
PE15 8NQ

Decision (including any steps ordered)

1. The complainant has requested information relating to public funding for a specified planning application. Fenland District Council (the council) stated that no relevant information was held and provided an explanation as to the planning history of the application.
2. The Commissioner is satisfied that the council does not hold the requested information. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 19 October 2012 the council received an undated request from the complainant for information in the following terms:
"I request that under the FOIA the Council provides a full inventory of all public funding provided to [specified property] relating to the above application, contact details of all public bodies involved and copies of contracts".
4. On 5 December 2012 Fenland District Council responded stating that no relevant information was held. The council provided the complainant with an explanation as to the planning history of the application detailed in the request.

5. The complainant submitted further questions to the council on 12 December 2012, prompting a reply from the council on 16 January 2013.
6. Following an internal review the council wrote again to the complainant on 15 February 2013, upholding its position.

Scope of the case

7. The complainant subsequently contacted the Commissioner to complain about the way his request for information had been handled. In his complaint letter he outlined his view that the specified property had received funding from various public bodies and his belief that therefore the council would hold information relating to his request.
8. The scope of the Commissioner's investigation was to determine whether the Council holds the requested information.

Reasons for decision

Regulation 2 – environmental information

9. The Commissioner notes that the request relates to environmental information and has considered the complaint with reference to the terms of the Environmental Information Regulations 2004 (the EIR). This is because the request relates to a planning application and meets the definition for environmental information as set out in regulation 2(1)(c).

Regulation 12(4) – refusal where information is not held

10. Regulation 5(1) provides that a public authority that holds environmental information should make it available on request.
11. Regulation 12(4) provides that a public authority may refuse to disclose information where it does not hold that information when a request is received.
12. In this case the council advised the complainant that the specified planning permission had not been implemented. The council further stated that it held no information relating to public funding provided to the property.

13. In considering cases such as this, the Commissioner, in accordance with a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities. To reach a decision on this the Commissioner has considered the context of the case, the nature of the requested information, the authority's responses, the arguments provided by the complainant and any evidence to suggest that the information in question is held.
14. In order to assist with this determination the Commissioner asked the council a range of questions.
15. During the course of this investigation the council confirmed to the Commissioner that it had asked each team within the council to check its records for relevant information. A check of the centralised finance data was also made. These searches did not locate any information relating to funding provided to the specified property.
16. The council also checked its grants records and found no record of a council grant being provided to the property. The council also provided the Commissioner with a copy of its data retention policy, which confirmed that any grants provided by the council would be regarded as contracts and would be disposed of six years after the conclusion of the grant period.
17. The council could not confirm whether the information requested had ever been held but confirmed that it held no information at the time of the request.
18. The council detailed the possibility that funding may have been granted by some external bodies but that it does not hold any relevant records. It explained that it does not routinely hold information about external funding given to private bodies within the council's area. While it acknowledged it may be possible that public funding had been provided to the property by external bodies, on the basis of its checks and searches of its records it confirmed that it did not hold any relevant information.
19. On the basis of the explanations provided by the council, the Commissioner is satisfied that the council took reasonable steps to search for information relevant to the request. Although he notes the complainant's concerns in this matter he must reach his conclusions on the basis of the available evidence, and does not consider there to be evidence that relevant information was held by the council at the time the request.

20. Based on submissions provided by both the complainant and the council, the Commissioner's decision is that on the balance of probabilities the council does not hold any recorded information relevant to the complainant's request.
21. The Commissioner finds that when refusing the request, the council correctly applied regulation 12(4) of the EIR.

Right of appeal

22. 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

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.

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

Alexander Ganotis
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