

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

**Date:** 31 July 2013

**Public Authority:** English Heritage  
**Address:** The Engine House  
Fire Fly Avenue  
Swindon  
SN2 2EH

**Decision (including any steps ordered)**

---

1. The complainant has requested the papers presented at the symposium at Kenwood House on 1 December 2010. English Heritage provided the complainant with one presentation but said it did not hold any of the other presentations.
2. English Heritage appears to have dealt with this request under FOIA as well as EIR. Therefore, if held, some of the information requested would be environmental information and some would not. As English Heritage has confirmed that no further information is held, it would be dealt with in the same way under FOIA and EIR. In this case the Commissioner considers that English Heritage was correct to confirm that it did not hold any further presentations given at the symposium referred to in the request.
3. The Commissioner requires no steps to be taken.

**Request and response**

---

4. On 26 October 2012 the complainant made the following request for information under FOIA/EIR:

"Can you please confirm that English Heritage has been provided with copies of the papers presented at the above symposium at Kenwood House on December 1 2010 and referred to in the extract from the

symposium information prospectus as below;

Delegates to this scholarly one-day symposium will consider Adam's neo-classical furniture, specifically focusing on his designs and interior schemes for both houses. The papers will discuss the most recent research in this subject area and new discoveries about aspects of Adam's furniture will be shared, such as his design process and office management, details about the construction and materials used, as well as particular furniture types."

5. On 1 December 2012 English Heritage responded. It confirmed that it did hold information that fell within the scope of the request. It provided the complainant with information relevant to the symposium but asked him for a postal address to provide one of the presentations as it was too large to send electronically. It explained that some of the information he had requested was not held as it belonged to external speakers who had not provided English Heritage with a copy of their presentations. It is not clear whether English Heritage was responding under FOIA or EIR at this stage.
6. On 9 December 2012 the complainant wrote to English Heritage as the presentations he had requested had not been provided to him. He explained that he considered that the presentations were held by the external organisations/individuals 'on behalf of' English Heritage.
7. On 11 December 2012 English Heritage wrote to the complainant to explain that he had not provided it with a postal address to send him a copy of the presentation which it did hold as it was given by a member of English Heritage staff. It went on to explain that whilst the symposium was organised by English Heritage and the event held at Kenwood House, an English Heritage property, the speakers wrote their own presentations and none were asked to submit a paper, presentation or similar document prior to their talk. English Heritage said that in order for information to be "held on behalf of a public authority" such as English Heritage, for the purposes of the EIR, there has to be a relationship between the two parties, for example: a contractual arrangement or where a third party is acting as the public authority's agent. It confirmed that it does not have any such relationship with the individuals who spoke at the symposium. It reiterated that the only presentation that it holds, under Regulation 3(2)(a) of the EIR, which provides that the information is held if it "is in the public authority's possession and has been produced or received by the authority", is the one which was given by [named individual] as she is a member of English Heritage staff and kept a copy for her own records.

8. On 13 December 2012 the complainant wrote to English Heritage and provided his postal address. He explained that he considered that English Heritage did have a legal relationship with others who presented at the event and he did therefore consider the information he had requested was held by them on behalf of English Heritage.
9. On 16 January 2013 English Heritage wrote to the complainant and confirmed that it had provided him with all information it holds in response to his request. By this time it had posted to him a copy of the one presentation which it did hold.

### **Scope of the case**

---

10. The complainant contacted the Commissioner on 18 March 2013 to complain about the way his request for information had been handled, in particular that he considered that the presentations that had not been provided were held by external individuals on behalf of English Heritage.
11. The Commissioner has considered whether English Heritage is correct when it says that it does not hold the presentations requested other than the one given by [named individual]. Furthermore he has considered whether English Heritage adhered to the statutory time for compliance when handling this request.
12. Whilst English Heritage did respond under EIR on 11 December 2012, in its submissions to the ICO dated 23 July 2013 it referred to FOIA as well as EIR. As the issue as to whether any further information is held would be dealt with the same under both pieces of legislation the Commissioner has considered this together.

### **Reasons for decision**

---

13. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request".
14. Regulation 5(1) states that, "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 12(4) states that, "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;"

15. In this case English Heritage organised the symposium relevant to the scope of the request and has provided the complainant with a copy of the presentation that was given by a member of English Heritage staff. It has explained that all of the other presentations were given by external individuals and their presentations were not provided to English Heritage.
16. English Heritage confirmed that [named individual], who organised the symposium, was contacted to determine what information was held. It said that after checking her records about the symposium she confirmed that she only had a copy of the presentation that she gave at the symposium. She had kept it for her own records. It said that as [named individual] organised the symposium, and was the contact for all of the speakers, it believed it was reasonable to conclude that she is the only member of English Heritage staff who would have copies of any presentations that were given and be best placed to confirm whether or not the disputed information was held. For this reason it confirmed that no other members of English Heritage staff were contacted.
17. English Heritage explained that it does not consider that the external presenters hold the other presentations on behalf of English Heritage. It said that in coming to this conclusion it considered the Information Commissioner's guidance on 'Information held by public authorities'. It noted that there is one which concerns the FOI Act and another about the EIR, it explained that the sections which discuss the matter of when information is 'held by another person on behalf of the authority', which is what is of consideration here, appear to be identical. It explained that while the guidance discusses a number of scenarios, it is the relationship between the two bodies in question which seems to be the underlying consideration in all of them. It argued that it is the relationship between English Heritage and the individuals who spoke at the symposium, for the purpose of them speaking at the symposium, which it considered to determine whether or not the disputed information is held by English Heritage.
18. It reiterated that although English Heritage was responsible for organising the symposium, it did not have any kind of relationship, such as a contractual one, with any of the speakers in relation to it. It said that the individuals who spoke at the symposium wrote their own presentations and were not asked, or in any way obliged, to submit a paper, presentation or similar document prior to their talk. It confirmed that none did so. It said that it does not have a business purpose or statutory duty that necessitated it obtaining the information that the complainant is seeking. Finally it confirmed that the type of information

that is the subject of this complaint is not referred to in its Records Management policy as there is no need for it to be.

19. Based upon the submissions provided by English Heritage, the Commissioner considers that it directed its searches and enquiries accurately in order to determine what information was held by English Heritage. English Heritage has confirmed that the external speakers did not have a contractual relationship with it in relation to symposium. It has explained that the presentations were written by the individual speakers. It has also confirmed that the external speakers did not provide it with copies of their presentations and furthermore English Heritage did not oblige them to do so. On this basis the Commissioner does not consider that the external speakers hold the presentations they delivered on behalf of English Heritage. On the balance of probabilities English Heritage does not therefore hold any further information other than that which has already been provided to the complainant.

### **Section 10/Regulation 5(2)**

20. Section 10 of FOIA states that, "Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."
21. Regulation 5(2) states that, "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."
22. In this case the complainant submitted his request on 26 October 2012 and English Heritage did not respond until 1 December 2012. English Heritage did not therefore respond within 20 working days. It breached section 10(1) FOIA and regulation 5(2) EIR in its handling of this request.

## Right of appeal

---

23. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

24. 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.
25. 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**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**