

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

**Date:** 24 February 2014

**Public Authority:** The Governing Body of Sheringdale Primary School

**Address:** Standen Road  
Wandsworth  
London  
SW18 5TR

**Decision (including any steps ordered)**

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1. The complainant has requested from Sheringdale Primary School (Sheringdale) information relating to the presence of asbestos at the site. Sheringdale refused to comply with the request under section 41 (information provided in confidence) of FOIA. The Commissioner's decision is that any information captured by the request would constitute environmental information and therefore the correct-access regime that should be applied is the EIR rather than FOIA. He therefore requires Sheringdale to consider the request under the EIR and issue an appropriate response for the purposes of the legislation.
2. The public authority must take this step 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 Act and may be dealt with as a contempt of court.

**Request and response**

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3. On 10 June 2013 the complainant made an information request to Sheringdale in the following terms:

*Following advice from the Council I would like to request the documents relating to the presence of asbestos in the school. It is surprising that the Council being the dutyholder with regard to asbestos management were unable to provide this information.*

4. Sheringdale responded to the request on 7 July 2013. It refused to comply with the request on the basis that the information sought was exempt from disclosure under section 41(1) of FOIA.
5. The complainant wrote to Sheringdale again the following day, 8 July 2013, challenging its reliance on section 41 and particularly the claim that disclosure would constitute an actionable breach of confidence.
6. Sheringdale subsequently carried out what was effectively an internal review. This maintained it would be inappropriate to release the requested information at that time.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 3 September 2013 to complain about the way her requests for information had been handled. Principally, she disputed Sheringdale's decision to withhold requested information.
8. In addition, the complainant did at an early stage of the investigation raise two further items. Firstly, she asked the Commissioner to consider whether Wandsworth Council (the Council referred to in the request), as the dutyholder with regard to asbestos management in community schools, had neglected its responsibilities by supposedly not holding the asbestos information. Secondly, she expressed her hope that the Commissioner's involvement would allow her access not only to information concerning the presence of asbestos at Sheringdale that was held at the time of the request but also to any new information that may have since been produced.
9. In response, the Commissioner has advised the complainant that he is unable to consider either of these two items as part of the present case. In relation to the first, each investigation carried out by the Commissioner must by necessity under the legislation focus on a single public authority and the issue of compliance. Any concerns about a different organisation would therefore have to be dealt with as a new case and investigated separately. In terms of the second item, any decision reached by the Commissioner can only relate to the question of whether a public authority complied with the legislation by its original handling of a request based on the circumstances as they stood at that time. He is therefore unable to broaden his investigation to incorporate

information that was subsequently generated, regardless of the assumed significance of that later information.

10. Accordingly, this decision notice only considers the request made to Sheringdale and the information that was held at that time.

## Reasons for decision

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### The applicable access-regime – FOIA or the EIR?

11. Upon receipt of the information request, Sheringdale decided that it should be processed under FOIA and responded accordingly. However, reflecting on the nature of the information being sought, the Commissioner has recognised the possibility that it would represent environmental information and should be dealt with under the EIR and not FOIA. The first question for the Commissioner is therefore to determine the applicable legislative access-regime.
12. To do so it is necessary to consider regulation 2 of the EIR, which provides a definition of “environmental information”. In order for information to be environmental, it must be captured by one of the descriptions listed at regulations 2(1)(a) through (f) – constituting “information on” any of the subjects covered by those six paragraphs. In his guidance ‘What is environmental information?’<sup>1</sup>, the Commissioner acknowledges that the use of the word “on” in the definition indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information.
13. In other words, if information is about, relates to or concerns any of the definitions set out at regulation 2(1) of the EIR it is environmental information. A key point when considering this question is that it is not necessary for the information itself to have a direct effect on the environment, or to record or reflect such an effect, in order for it to be environmental.
14. In the decision notice issued under the case reference FER0266738<sup>2</sup>, which involved Warwick District Council, the Commissioner considered

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<sup>1</sup>[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Introductory/EIR\\_WHAT\\_IS\\_ENVIRONMENTAL\\_INFORMATION.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Introductory/EIR_WHAT_IS_ENVIRONMENTAL_INFORMATION.ashx)

<sup>2</sup> [http://www.ico.org.uk/~media/documents/decisionnotices/2011/fer\\_0266738.ashx](http://www.ico.org.uk/~media/documents/decisionnotices/2011/fer_0266738.ashx)

an application for information that, among other things, asked for asbestos surveys and reports. As evidenced at paragraph 41 of his decision, the Commissioner found that any information meeting the description of an asbestos survey or report would be environmental information for the purposes of the EIR. This is because he considered it was captured by the definition set out at regulation 2(1)(b) as it was information on:

*"[...] substances [...] affecting or likely to affect the elements of the environment referred to in [regulation 2(1)(a)]"*

15. Likewise, the Commissioner has found that the definition will apply to any information held by Sheringdale. This is on the basis that the request similarly asks for information recording the presence of asbestos. The Commissioner also considers that the definition stated at regulation 2(1)(f) of the EIR is likely to be relevant, which covers environmental information on the "state of human health and safety". Asbestos fibres, when inhaled, can cause serious diseases in humans with potentially fatal consequences. This risk has therefore led to individuals and organisations taking steps to identify whether asbestos is present at a site and, if so, managing or removing the asbestos so that any risk is effectively reduced.
16. Accordingly, for the reasons set out above, the Commissioner has decided that the information request should have been handled under the EIR and not the FOIA. He therefore requires Sheringdale to consider the request under this access-regime and issue an appropriate response.

## Right of appeal

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17. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**