

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 June 2015

Organisation: Geoplace LLP
Address: 157-197 Buckingham Palace Road
London
SW1W 9SP

Decision (including any steps ordered)

1. The complainant has requested information from GeoPlace LLP ("GeoPlace") regarding whether a street or alley is adopted. GeoPlace has explained that it is not a public authority for the purposes of the EIR or the Freedom of Information Act 2000 (the "FOIA"). It has therefore refused to respond to this request under either piece of legislation. It has also argued that the request is not a request for environmental information.
2. Following the decision in the case *Fish Legal v Information Commissioner & Others (GIA/0979/2011 & GIA/0980/2011)* ("Fish Legal"), GeoPlace repeated its position that it does not consider it is a public authority. However it decided it would voluntarily comply with both the EIR and the FOIA as a matter of policy. It has therefore now provided a response to the complainant. The complainant is not satisfied with this response and has argued GeoPlace has an obligation to provide full access to the information required under the FOIA or the EIR.
3. The Commissioner's decision is that this request is for environmental information but that GeoPlace is not a public authority for the purposes of the EIR. He therefore considers that GeoPlace is not obliged to respond to this request under the EIR and requires no steps to be taken in this case.

Background

4. GeoPlace deals with spatial address and street information management across the country. Its role is to create and maintain the National Address Gazetteer Database and the National Street Gazetteer Database

for England and Wales, providing definitive sources of publicly-owned spatial address and street data.

5. GeoPlace has explained that the National Street Gazetteer (the "NSG") can only be used by an organisation with:
 - (i) a statutory duty to coordinate street works activities or dig in the road; or
 - (ii) a legitimate need to access the data connected to the core business function of contributing data to and from the NSG.
6. The NSG therefore enables highways authorities and statutory undertakers to coordinate street works in order to ease traffic congestion and disruption to road users.

Request and response

7. On 3 September 2014, the complainant asked GeoPlace if it could provide him with information regarding whether a street or alley is adopted.
8. The GeoPlace informed him that he would need to go to his local authority for the information.
9. GeoPlace informed the complainant that the NSG is only accessible to statutory undertakers or contractors coordinating street works activities, or contributors to the NSG.
10. The complainant argued that GeoPlace is a public sector partnership and as such is subject to the FOIA and the EIR. He also explained he holds a licence for Ordnance Survey ("OS") maps.
11. Following a review on 11 September 2014, GeoPlace confirmed that it is not a public authority for the purposes of the EIR.
12. It also argued that the NSG itself contains third party intellectual property rights (IPR) and disclosure would prejudice commercial and IPR interests in the dataset (section 43 of the FOIA and regulation 12 of the EIR).
13. The complainant contacted the Commissioner on 8 October 2014 to complain about the way his request for information had been handled. The Commissioner reviewed the case and considered it was advisable to wait until the judgement in the Fish Legal case. This case had been

referred to the Upper Tribunal for a decision regarding the question of whether water companies are public authorities for the purposes of regulation 2(2)(c) or (d) of the EIR.

14. Following the decision in the Fish Legal case, GeoPlace repeated its position that it does not consider it is a public authority. However it decided it would voluntarily comply with both the EIR and the FOIA as a matter of policy. It informed the Commissioner that it accepts the information is within the scope of the FOIA. It does not consider that the information is environmental.
15. GeoPlace asked the complainant to identify which geographical area his request related to. It also explained that the data supplied is subject to Crown Copyright and must only be used for personal non-commercial use. It explained that the owners of Crown Copyright (Ordnance Survey) reserve the right to investigate and audit potential breaches of use of its data.
16. In response the complainant argued that the request should be treated as 'motive blind' and that GeoPlace cannot impose restrictions. He explained he is interested in England and Wales. He asked for the data to be emailed to him (as KML or GML) or to be provided with login details.
17. On 27 March 2015 GeoPlace sent the complainant a DVD which contains a list of roads. However the complainant is dissatisfied as he has no way of checking how complete the list is. He has also argued that because the list does not contain postcodes, it is not suitable for his purposes.
18. The complainant has stated he requires access to maps on the GeoPlace system and therefore wants login details.

Scope of the case

19. On 1 April 2015 the complainant contacted the Commissioner to confirm that he remained dissatisfied about the way his request for information had been handled. He argued that GeoPlace is subject to the EIR/FOIA and has not complied with the request.
20. The Commissioner considers the scope of this case to be concerned with the question of whether the request is for environmental information and whether GeoPlace is a public authority for the purposes of the EIR.
21. In the Fish Legal case, the Upper Tribunal Administrative Appeals Chamber (the "UT") ruled that the Commissioner has jurisdiction to both investigate and decide whether a body is a public authority.

22. The Commissioner therefore has jurisdiction to decide this question. The First Tier Tribunal (the "FTT") may also hear appeals against the Commissioner's decisions and the UT may hear appeals against the decisions of the FTT.

Reasons for decision

Is the requested information environmental information?

23. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
24. Regulation 2(1)(c) of the EIR states that 'environmental information' constitutes any information on measures such as policies, plans and activities which are likely to affect the environmental elements and factors which are listed in subsection (a) and (b).
25. Subsection (a) defines environmental information as information on the state of the elements of the environment such as land and landscape.
26. GeoPlace has argued that while it can be argued that the adopted or unadopted status of a road can be a 'plan' or 'programme' under regulation 2(1)(c), it does not consider that such status is likely to affect (i) the state of the environment, or (ii) factors likely to affect the environment.
27. The Commissioner considers that information about whether or not a street or alley is adopted is information which concerns the status and the maintenance of that land. He considers road adoption affects how much money will be invested in the road and is therefore likely to affect the state of that land.
28. The Commissioner therefore considers that the information requested by the complainant is environmental information as defined by the EIR.

The definition of a public authority for the purposes of the EIR

29. The EIR gives members of the public the right to access environmental information held by the vast majority of public authorities and places a duty on public authorities to respond to requests for environmental information.
30. If a public authority receives a request for environmental information they are legally obliged to provide it, usually within 20 working days, unless any of the exceptions contained within the EIR apply. If a public authority believes an exception does apply to the information that has

been requested, then the public authority must explain why the exception applies.

31. The definition of public authority is given in Regulation 2(2) of the EIR. In particular it states that a "public authority" means the vast majority of public authorities as defined in Section 3 of the FOIA and:
 - (c) any other body or other person, that carries out functions of public administration; and
 - (d) any other body or other person that is under the control of a public authority and:
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.
32. In considering the question of whether GeoPlace is a public authority for the purposes of the EIR, it must therefore be established whether GeoPlace carries out functions of public administration or is under the control of a public authority.
33. The Fish Legal case is relevant to this question. This considered the issue of whether water companies are public authorities for the purposes of regulation 2(2)(c) or (d) of the EIR.
34. The Fish Legal case therefore considered whether the relevant bodies are entrusted by law with the performance of services in the public interest and whether they are therefore vested with special powers. It also considered control of the companies and their autonomy.
35. With respect to functions of public administration, the UT in the Fish Legal case explained that persons 'performing public administrative functions' are:

"entities, be they legal persons governed by public law or by private law, which are entrusted, under the legal regime which is applicable to them, with the performance of services of public interest, inter alia in the environmental field, and which are, for this purpose, vested with special powers beyond those which result from the normal rules applicable in relations between persons governed by private law".
36. It then considered the question of whether the companies in that case had 'special powers'.

37. The UT also set out the test for 'control'. It explained the test applies to the manner in which functions are performed, not the functions themselves. For example, a body is not under control of the Government merely because its powers derive from statute.
38. There are therefore two elements to the test – in order for a body to be under the control of a public authority, it must:
 - (i) operate in fact in a non-autonomous manner; and
 - (ii) do so because a public authority is in a position to control it.
39. In other words, although the public authority need not actually be exercising its powers of control, the existence of the powers must have a real constraining effect on the body in question.
40. Furthermore, the UT decided that the test requires consideration of the body's overall manner of performing its services: it would not be enough to find control in 'one or two marginal aspects' of its business.
41. The UT pointed out that 'no legitimate business has complete freedom of action'. It explained that as all operate in a framework of legal and commercial constraints, something more is needed before one can say that they have lost their autonomy.

Is GeoPlace a public authority for the purposes of the EIR?

42. In accordance with the Fish Legal case, in considering whether GeoPlace is a public authority for the purposes of the EIR, the Commissioner has considered the tests with respect to regulation 2(2)(c) 'functions of the public administration' and 2(2)(d) 'control'.
43. He has summarised below the arguments of GeoPlace with respect to these questions.

(i) Functions of the public administration: does GeoPlace hold special powers?

44. Regulation 2(2)(c) of the EIR states that the definition of a public authority includes a body or other person, that carries out functions of public administration.
45. In accordance with the Fish Legal judgement, the Commissioner has therefore considered whether GeoPlace is entrusted with the performance of services of public interest and vested with special powers beyond those which result from the normal rules applicable in relations between persons governed by private law.

46. GeoPlace has explained that the NSG is not freely available to the public and is only available to those statutory undertakers and other bodies where they have a legitimate use connected to the core business of a Highway Authority. These entities are licensed for the same underlying OS data that the NSG was created on. This is a licence for OS MasterMap integrated Transport Network data and OS MasterMap Topography Layer.
47. GeoPlace has explained that if the data was to be used in a commercial application (eg property searches) then an appropriate commercial licence from OS would be required.
48. Section 36(6) of the Highways Act 1980 requires that all Local Highways Authorities in England and Wales must make available a List of Streets that are maintainable at public expense (ie whether they have been adopted). However GeoPlace has explained it does not have these obligations.
49. GeoPlace therefore considers it is not providing services for the public.
50. It has explained that local authorities provide address and streets information to it under an agreement known as the Data Co-operation Agreement (DCA). Each local authority enters into a DCA with GeoPlace on a bilateral basis, although the terms of the DCA are the same.
51. The DCA is closely linked to the Public Sector Mapping Agreement Member Licence, between local authorities and Ordnance Survey (PSMA Member Licence), which:
 - (i) licenses the local authorities to use a range of mapping products; and
 - (ii) obliges relevant local authorities to enter into and comply with the DCA.
52. GeoPlace has explained that in terms of legislation, as the appointed NSG Concessionaire/Custodian, it has an implied responsibility to hold (and maintain) the NSG, but no legislative power to enforce local authorities to provide it with data.
53. It has also pointed out that the Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters (the Code) provides that local highway authorities and other relevant authorities must supply certain streets data to GeoPlace.
54. However GeoPlace does not consider that this necessarily constitutes a statutory obligation. For example, section 59(3) of the New Roads and

Street Works Act 1991, provides that a street authority "shall have regard to" the Code.

55. GeoPlace has therefore explained it does not have any associated powers regarding the obtaining of information, beyond rights it has under contract.
56. Subject to the implied responsibility referred to above, GeoPlace is not required to do anything by legislation outside what is required of similar businesses and limited liability partnerships (for example it is required to comply with health and safety legislation and the Limited Liability Partnerships Act 2000). It has also explained that its scrutiny and reporting requirements are the same as for other similarly constituted limited liability partnerships.
57. GeoPlace has therefore argued that its right to receive address and streets information derive from contract law, rather than as a result of any "special powers" (as referred to in the Fish Legal case).
58. The Commissioner considers it is clear that GeoPlace does not satisfy the special powers test under 2(2)(c). He is satisfied it does not have any special powers vested in it which go beyond the rules it would be able to assert in private law.

(ii) Is GeoPlace under the control of a public authority?

59. Regulation 2(2)(d) of the EIR states that if an organisation is under the control of a public authority and has public responsibilities, it could be considered as a public authority itself.
60. As identified in the Fish Legal case, there are two elements to the test of control. If a body is under the control of a public authority, it must operate in fact in a non-autonomous manner and do so because a public authority is in a position to control it.
61. GeoPlace has explained it is established as a limited liability partnership, jointly owned and controlled by Ordnance Survey and the Improvement and Development Agency for Local Government (trading as Local Government Improvement and Development (LGID)). It is owned as a joint venture through a 50:50 partnership and its objectives are set by Ordnance Survey and LGID. It does not have a public duty.
62. GeoPlace has confirmed that it does not receive any funding direct from public sources and that it generates revenue by selling address products and data consultancy services. It provides a range of services to both public and private sector organisations and does not have a public task.

63. On the question of control under 2(2)(d) the Commissioner has concluded that given the way GeoPlace is constituted, jointly between OS and LGID, there is no body under EIR 2(2)(a), (b), (c) that exerts decisive control. OS fall within the category of a public authority under the EIR but they do not exert decisive control because of the 50-50 arrangement with LGID on the Board.
64. The Commissioner is satisfied that LGID is not a public authority under the EIR. It is an organisation with a cross political membership with no special powers or control by other public authorities. Therefore there is no combined decisive control of GeoPlace by OS and LGID.
65. The Commissioner therefore considers that GeoPlace is not under the control of a public authority.

Conclusion

66. In view of the above, the Commissioner is satisfied that GeoPlace is not a public authority for the purposes of the EIR.

Right of appeal

67. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

68. 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.
69. 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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