

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

Decision notice

Date: 19 January 2016

Public Authority: Heritage Lottery Fund
Address: 7 Holbein Place
London
SW1W 8NR

Decision (including any steps ordered)

1. The complainant has requested all communications between Heritage Lottery Fund (HLF), Thanet District Council, Sands Heritage Ltd and Dreamland Trust relating to the regeneration of Dreamland in Margate from August 2014 onwards.
2. The Commissioner's decision is that HLF has acted appropriately by refusing to disclose the remaining withheld information under regulation 12(5)(e) of the EIR. He therefore does not require any further action to be taken.

Request and response

3. On 13 May 2015, the complainant wrote to HLF and requested information in the following terms:

"I'm writing for all communication (emails, meeting minutes, contracts, briefings) between Heritage Lottery Fund, Thanet District Council, Sands Heritage Ltd, and the Dreamland Trust regarding Dreamland Margate between August 2014 and the present date up to the date the information is released."
4. HLF responded on 10 June 2015. It disclosed some information to the complainant but refused to disclose other information citing sections 41 and 43 of the FOIA.

5. The complainant requested an internal review on 29 June 2015.
6. HLF carried out an internal review and notified the complainant of its findings on 15 July 2015. It informed the complainant that it remained of the opinion that her request for information had been handled correctly and the exemptions previously cited still applied.

Scope of the case

7. The complainant contacted the Commissioner on 20 July 2015 to complain about the way her request for information had been handled. Specifically, the complainant stated that she believes the public interest in favour of disclosure outweighs any commercial confidentiality cited. She stated that her request relates to a publicly funded project which contains a number of listed structures to grade II level.
8. During the Commissioner's investigation it was established that the request should have been considered under the EIR rather than the FOIA. HLF agreed and confirmed that it wished to rely on regulations 13 and 12(5)(e) of the EIR.
9. The requested information is information relating to the grant HLF gave Thanet District Council and the Dreamland Trust for the regeneration of Dreamland in Margate. It is therefore information on or relating to a measure or plan, as defined in regulation 2(1)(c) of the EIR, which will affect the elements of the environment, such as the land and landscape, as defined in regulation 2(1)(a) of the EIR.
10. During the Commissioner's investigation all remaining withheld information was disclosed to the complainant with the exception of the following:
 - An email dated 12 April 2015 between the Dreamland Trust and HLF to which regulation 12(5)(e) of the EIR has been applied.
 - The personal data of some email recipients and senders to which regulation 13 of the EIR has been applied.
11. The complainant raised no further concerns with the Commissioner during his investigation about the application of regulation 13 of the EIR despite various opportunities to do so. So this element of the original complaint was not pursued further and will not be addressed in the remainder of this notice. The remainder of this notice will focus on the email dated 12 April 2015 and HLF's application of regulation 12(5)(e) of the EIR (the 'remaining withheld information').

Reasons for decision

12. Regulation 12(5)(e) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
13. For the Commissioner to agree that the withheld information is exempt from disclosure by virtue of regulation 12(5)(e) of the EIR, the council must demonstrate that:
 - the information is commercial or industrial in nature;
 - the information is subject to confidentiality provided by law;
 - the confidentiality provided is required to protect a legitimate economic interest; and
 - that the confidentiality would be adversely affected by disclosure.
14. This exception is also subject to the public interest test. In addition to demonstrating that this exception is engaged, HLF must also explain how it considered the public interest for and against disclosure and how it reached the view that the public interest in favour of disclosure is outweighed by the public interest in maintaining this exception.
15. HLF's arguments supporting the application of this exception are contained in the attached Confidential Annex, as is the Commissioner's reasoning for upholding HLF's application of this exception. It has not been possible to present these arguments in the main body of this notice due to their commercial sensitivity and the arguments themselves containing elements of the withheld information itself.
16. The Commissioner has however concluded that the remaining withheld information is exempt from disclosure by virtue of regulation 12(5)(e) of the EIR and that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception in this case.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF