

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

Date: 10 September 2018

Public Authority: NHS Property Services Ltd
Address: Skipton House
London
SE1 6LH

Decision (including any steps ordered)

1. The complainant requested information from NHS Property Services Ltd in relation to land of Countess of Chester Hospital Water Tower Site (CoCHWTS), managed by NHS Property Services Ltd and unauthorised occupation of the this land by Morris Homes Ltd.
2. The Commissioner's decision is that NHS Property Services Ltd has breached Regulation 5(2) of the EIR in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires NHS Property Services Ltd to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with the EIR.
4. NHS Property Services Ltd must take these steps 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

5. On 20 March 2018, the complainant wrote to NHS Property Services Ltd and requested information in the following terms:

"2.1. What is the total land area of the CoCHWTS managed by NHSPS in acres?"

2.2. Did NHSPS invoice MH for their unauthorised occupation of the CoCHWTS?

2.3. If the answer to 2.2. is 'Yes':-

2.3.1. From what date to what date?

2.3.2. For what area of land in acres?

2.3.3. At what commercial rate per acre per diem?

2.3.4. What was the quantum of the Invoice?

2.3.5. Has the Invoice been paid by MH to NHSPS?

2.4. If the answer to 2.2. is 'No':-

2.4.1. When will it be Invoiced?

2.4.2. ? From what date to what date?

2.4.3. For what area of land in acres?

2.4.4. At what commercial rate per acre per diem?

2.4.5. What will be the quantum of the Invoice?

2.4.6. When will the Invoice be payable by MH?

2.4.7 In the event that MH do not pay the Invoice on time, and in full, what action will NHSPS take to recover the quantum of the Invoice, plus Interest thereon for late payment, plus legal costs, for the benefit of the 'Public Purse'?"

6. Regulation 5(2) of the EIR states that information should be made available no later than twenty working days after the date of receipt of the request. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 16 May 2018 to complain about the failure by NHS Property Services Ltd to respond to his request.
8. The Commissioner has considered whether NHS Property Services Ltd has complied with its obligations in relation to the time for compliance at Regulation 5(2) of the EIR.

Reasons for decision

9. Regulation 2(1) of the EIR defines environmental information as being information on:
 - "(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - "(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
 - "(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
 - "(d) reports on the implementation of environmental legislation;*
 - "(e) cost-benefit and other economic analysis and assumptions used within the framework of the measures and activities referred to in (c);"*
10. The Commissioner has not seen the requested information but, as it is information relating to land and economic matters, she believes that it is likely to be information about "measures" affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.
11. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.

12. Regulation 5(2) of EIR 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."

13. On 26 July 2018 the Commissioner wrote to NHS Property Services Ltd, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.

14. Despite this intervention NHS Property Services Ltd has failed to respond to the complainant.

15. From the evidence provided to the Commissioner in this case, it is clear that NHS Property Services Ltd did not deal with the request for information in accordance with the EIR. The Commissioner finds that NHS Property Services Ltd has breached Regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.

Right of appeal

16. 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

17. 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.
18. 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

Andrew White
Group Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF