

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 July 2020

Public Authority: South Leverton Parish Council
Address: edknoxlocum@outlook.com

Decision (including any steps ordered)

1. The complainant has requested from South Leverton Parish Council (SLPC) information on work conducted by a voluntary Steering Group to create a local Neighbourhood Plan. SLPC said that the Steering Group was completely separate from SLPC and that any information that the Group held in connection with the Neighbourhood Plan was neither held by SLPC nor accessible by means of an information request to SLPC.
2. The Commissioner's decision is that the requested information is held by the Steering Group for SLPC's business purposes and thus that it is 'held' by SLPC within the meaning of regulation 3(2)(b) of the EIR. She also finds that SLPC breached regulation 5(2) of the EIR by failing to provide its response within 20 working days.
3. The Commissioner requires SLPC to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request under the EIR. The response should not rely on a claim that SLPC does not hold the information within the meaning of regulation 3(2)(b) of the EIR.
4. SLPC 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.

Background

5. According to the GOV.UK website¹, Neighbourhood Plans give local communities input into the development and growth of their area.
6. SLPC states on its website² that it set up a voluntary Steering Group, made up of local residents, to prepare a Neighbourhood Plan for the area.
7. The complainant has explained that following a 'Call for Land' to identify suitable sites for development, an Open Forum was held in October 2019, seeking local residents' feedback on the sites that had been put forward. The complainant says he asked to see copies of the residents' consultation responses which had been collated by the Steering Group. The documents were subsequently made available for inspection, but the complainant asked to receive personal copies, preferably in electronic format. He says that this request was not complied with.

Request and response

8. On 4 December 2019, in an exchange of correspondence about access to the consultation responses, the complainant wrote to SLPC and requested information in the following terms:

"The documents have been requested to be scanned to allow people to read without any time constraints. These should be distributed ASAP and without further hindrance. They have been requested to be distributed by several people and also under the FOI Act [Freedom of Information Act 2000]."

9. There followed further email correspondence between the parties, in which the complainant asserted what he believed to be his legal right to receive scanned copies of the consultation responses.
10. On 4 January 2020, SLPC informed the complainant that it would attempt to send the documents in electronic format but this might be problematic due to the file size.

¹ <https://www.gov.uk/guidance/neighbourhood-planning--2>

² <https://southleverton-pc.gov.uk/south-leverton-parish-council-neighbourhood-plan/>

11. On 5 January 2020, the complainant wrote:

"For some time I have been asking for the disclosure of this information under the FOI Act and this is the FIRST response received. There is no reason that these documents could not be PDF scanned but at the worst several USB sticks loaded and distributed to members who can then carefully look over the results at leisure and in detail at home in readiness for fruitful discussions at the next meeting."

12. The complainant says that he was subsequently supplied with copies of some of the consultation responses on an informal basis by a member of the Steering Group. However, he did not consider this to constitute a formal response to an information request he had made to SLPC.

13. On 14 January 2020, the complainant contacted SLPC to complain about its failure to respond formally to his request. On 17 January 2020, SLPC replied, refusing the request and stating the following:

- The information was held by the Neighbourhood Plan Steering Group, and not by SLPC.
- The Steering Group is not a public authority and so is not subject to the Freedom of Information Act 2000.
- The complainant's dissatisfaction at the handling of his request was between him and the Steering Group, and not within SLPC's jurisdiction.

14. On 27 January 2020, the complainant asked SLPC to conduct an internal review of its handling of the request, stating that he was entitled to receive copies of the requested information directly from SLPC, rather than from a third party. Part of his reasoning for this was that he believed the information he had informally received contained omissions.

15. SLPC provided the outcome of its internal review on 24 February 2020. It reiterated that the requested information was not held by SLPC:

"The South Leverton Neighbourhood Plan Steering Group is not a sub-committee of the Parish Council, nor does it hold these documents on behalf of the Parish Council. The South Leverton Neighbourhood Plan Steering Group is not a public body, and therefore is not subject to FOI requests. These documents were put on display by the Steering Group management from the 2nd December 2019 onwards."

Scope of the case

16. The complainant contacted the Commissioner on 28 February 2020 to complain about the way his request for information had been handled. He did not accept SLPC's claim that it did not hold the requested information and maintained that his request had not been properly responded to by it.
17. The analysis below considers whether, from the standpoint of the EIR, information relevant to the request is held by, or held on behalf of, SLPC.

Reasons for decision

18. The EIR provide a right of access to environmental information. That right of access is subject to a number of exceptions, which allow a public authority to withhold information.
19. The definition of environmental information includes (at regulation 2(1)(c)) information on measures, such as policies, legislation, plans and activities affecting, or likely to affect, the elements of the environment.
20. The development of a Neighbourhood Plan is a measure affecting, or likely to affect, the elements of the environment. The right of access to this information should therefore be considered under the EIR, rather than under the Freedom of Information Act 2000, which the complainant cited in his request.

Regulation 5(1) – Duty to make information available on request

21. Regulation 5(1) of the EIR states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
22. SLPC has advised that any information falling in scope of the request would be held by a third party (the Steering Group) and not by itself. The Commissioner must therefore determine whether SLPC is correct in its assertion that it does not hold the requested information, by way of regulation 3(2) of the EIR.
23. The Commissioner firstly considered whether the voluntary Steering Group set up by SLPC could itself be considered a public authority. The Commissioner found that the Steering Group is not a public authority as defined in regulation 2(2) of the EIR (and SLPC does not dispute this). She has therefore gone on to consider the extent to which the requested information is held by the Steering Group on SLPC's behalf.

Regulation 3(2) – Application

24. Section 3(2)(b) of the EIR states that:

"For the purposes of these Regulations, environmental information is held by a public authority if the information—

...

(b) is held by another person on behalf of the authority.

25. The Commissioner's interpretation of regulation 3(2)(b) is that information is held by a public authority under the terms of the EIR if it is held by another person (which means a legal person, and could be an individual or an organisation), for the public authority's own purposes.

26. Government guidance on Neighbourhood Plans³ states that where a proposed area of development is covered by a Parish Council, the Parish Council is the 'qualifying body' for the Neighbourhood Plan, and, as such, it is responsible for leading the Plan.

27. In this case, SLPC argues that it has no involvement in the development of the Neighbourhood Plan because this work is being done by the voluntary Steering Group. However, the Commissioner notes that the voluntary Steering Group only exists because of a decision by SLPC to arrange for a local community group to develop its neighbourhood plan. SLPC's website states:

"In line with national policy, Bassetlaw District Council is encouraging all local villages to develop a Neighbourhood Plan ... We are now in the initial stages of preparing our Neighbourhood Plan. We have formed the necessary Steering Group, comprising of volunteer residents who wish to play an active role."

28. Meeting minutes on SLPC's website show that SLPC was responsible for approving Terms of Reference for the Steering Group, and SLPC has confirmed to the Commissioner that when a final plan has been developed and agreed, SLPC will present it as its own and will take it forward with the Local Planning Authority. Furthermore, SLPC has told the Commissioner that development of the Neighbourhood Plan is currently on hold, as proper oversight of the Steering Group cannot currently be undertaken, due to the resignation of several members of

³ <https://www.gov.uk/guidance/neighbourhood-planning--2#who-leads-neighbourhood-planning-in-an-area>

the Parish Council. It said that progress on the Plan is unlikely to resume until these vacancies have been filled.

29. The Commissioner appreciates that SLPC's motive for setting up the Steering Group may be to foster increased public engagement with the development of the Plan. However, she finds that SLPC has in effect delegated to a community group, work that it might normally be expected to carry out for the public. It is SLPC that ultimately carries legal responsibility for the Neighbourhood Plan, even where it has appointed a community group to work on it.
30. The government has set out its vision for engaging community groups in neighbourhood plans. Its published guidance states that arrangements between a council and a community group should be clear and transparent. The guidance states:

"What is the role of a parish or town council in neighbourhood planning? In a designated neighbourhood area which contains all or part of the administrative area of a town or parish council, the town or parish council is responsible for neighbourhood planning.

Where a parish or town council chooses to produce a neighbourhood plan or Order it should work with other members of the community who are interested in, or affected by, the neighbourhood planning proposals to allow them to play an active role in preparing a neighbourhood plan or Order.

The relationship between any group and the formal functions of the town or parish council should be transparent to the wider public. A parish or town council may choose to establish an advisory committee or sub-committee under section 102(4) of the Local Government Act 1972⁴ and appoint local people (who need not be parish councilors) to those bodies. Members of such committees or sub-committees would have voting rights under section 13(3), (4)(e) or (4)(h) of the Local Government and Housing Act 1989⁵. The terms of reference for a steering group or other body should be published and the minutes of meetings made available to the public."

⁴ <http://www.legislation.gov.uk/ukpga/1972/70/section/102>

⁵ <http://www.legislation.gov.uk/ukpga/1989/42/section/13>

31. The Commissioner explains in her guidance⁶, circumstances where information would be considered held on behalf of a public authority, which are relevant in this case:

"Information held on behalf of a public authority as a result of partnership or consortia arrangements – when public authorities work in partnership or in a consortium (ie those arrangements which do not have the legal status of a body or organisation separate to the individual partners), they need to be certain what information is held on behalf of each partner or member. This will arise in the public sector when the partners, who are otherwise independent bodies, agree to cooperate to achieve a common goal, create an organisational structure and agreed programme and share information, risks and rewards. Examples include:

- *local strategic partnerships*
- *road safety partnerships*
- *local environment partnerships*
- *economic partnerships*

In general terms, information that is brought to the partnership by one of the partners is regarded as being held by or on behalf of all partners. As there are various partnership arrangements it is not possible to provide guidance that will cover all of them. Much will depend on the individual arrangements of the partnership as to whether or not all information is held by all the partners or whether some is held by the partners solely on behalf of one of them."

32. The examples cited include where a public authority has entered into a local partnership arrangement with another body. In this case, SLPC has entered into an arrangement with the voluntary Steering Group to draw up a Neighbourhood Plan which SLPC will then take forward. The consultation response documents which comprise the requested information are a part of that process.

33. As set out in paragraph 25, the Commissioner's view is that information which to any extent relates to SLPC's business purposes will indeed be held on its behalf. Taking all the above into account, the Commissioner

⁶ https://ico.org.uk/media/for-organisations/documents/1640/information_held_for_the_purposes_of_eir.pdf

considers that the information the Steering Group holds about the Neighbourhood Plan does relate to SLPC's business purposes.

34. It follows that the Commissioner's decision is that that under regulation 3(2)(b) of the EIR, any information falling within the scope of the request that is held by the voluntary Steering Group, is held by SLPC.
35. The Commissioner therefore requires SLPC to take the action set out in paragraph 3.

Regulation 5(2) – time for compliance

36. Regulation 5(2) of the 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.”

37. The complainant has provided evidence that he submitted his request to SLPC on 4 December 2019 (although he says that verbal requests, which are valid under the EIR, were made earlier).
38. SLPC did not issue a formal response in respect of the request (which was that it was refusing it on the grounds that it did not hold the information) until 17 January 2020.
39. The Commissioner considers that SLPC breached regulation 5(2) of the EIR as it did not formally respond to the request within 20 working days of receiving it.
40. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft “Openness by design”⁷ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her “Regulatory Action Policy”⁸.

⁷ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁸ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

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

42. 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.
43. 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 Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF