

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

Date: 18 November 2022

Public Authority: The Crown Estate
Address: 1 St James's Market
London
SW1Y 4AH

Decision

1. The Commissioner's decision is that that the Crown Estate holds no information relevant to the complainant's request for a map of a particular area of the seabed and regulation 12(4)(a) of the EIR is engaged in that regard.
2. The Commissioner does not require the Crown Estate to take any corrective steps.

Request and response

3. The complainant made the following information request to the Crown Estate on 12 April 2022:
 - "1. A map to illustrate the area that the Crown Estate owns on the Seabed of Lough Foyle. In colour so no confusion please. Also the position of the boundaries with the adjoining landowners on whatever side of the lough the Crown Estate owns.
 2. A copy of the vesting agreement which was agreed dated 8th April 1952 in which the Seabed and Soil of Lough Foyle returned to the Crown Estate from the Irish Society."

4. The Crown Estate disclosed information within scope of part 2 of the request. Its final position with regard to part 1 is that it does not hold this information.

Reasons for decision

5. On the basis of their complaint to the Commissioner, this reasoning covers whether, on the balance of probabilities, the Crown Estate holds recorded information within scope of part 1 of the request.
6. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold the information when it receives the request.
7. In its response to the request, the Crown Estate advised that the location of the boundary and therefore ownership of the seabed between Northern Ireland and the Republic of Ireland through Lough Foyle remained an issue for the UK and Republic of Ireland governments. The Crown Estate said, in that context, it continues to work with relevant stakeholders to help inform discussions around this issue. It confirmed it therefore does not hold a map of the boundaries, as they are subject to further discussion.
8. In its internal review the Crown Estate said it had liaised with relevant individuals including the Transparency Manager, Coastal Asset Manager, a GIS Specialist and the Records Manager. The GIS Specialist consulted electronic records detailing ownership. The Crown Estate had also reviewed off-site records to see if they contain anything that would be relevant to the request. No relevant information was identified.
9. The complainant considers that, in order to carry out leases, the Crown Estate must hold a copy of the map they have requested. It is not the Commissioner's role to consider whether a public authority **should** hold particular information but solely whether or not it does, on the balance of probabilities. The Commissioner considers that the Crown Estate has consulted relevant individuals within the organisation and carried out appropriate and adequate searches for the map the complainant has requested. On the balance of probabilities, the Commissioner will accept that the Crown Estate does not hold the information requested in part 1 of the request and was entitled to rely on regulation 12(4)(a) of the EIR.
10. Although regulation 12(4)(a) is a qualified exception, the Commissioner's position is that it is not necessary to consider the public interest test as to do so would be illogical; the public interest cannot favour disclosing information which is not held.

Right of appeal

11. 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

12. 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.
13. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF