

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 November 2024

Public Authority: Welland and Deepings Internal Drainage Board

Address: Deeping House
Welland Terrace
Spalding
Lincolnshire
PE11 2TD

Decision (including any steps ordered)

1. The complainant requested information held by Welland and Deepings Internal Drainage Board (the Board) about the maintenance of the water and drainage system in Fosdyke.
2. The Board initially refused the complainant's request as vexatious, citing section 14 of the Freedom of Information Act 2000 (FOIA). However, during the Commissioner's investigation, the Board revised its position, and issued a fresh response to the complainant which stated that the requested information was not held.
3. The Commissioner considers that the request is for environmental information and the EIR is the correct information access regime. However, he is satisfied that, on the balance of probabilities, the Board does not hold information that falls within scope of the complainant's request.
4. The Commissioner does not require further steps.

Request and response

5. On 21 February 2024, the complainant wrote to the Board and requested information in the following terms:
 - “1. What was the date Welland & Deepings changed from manual maintenance to mechanical maintenance of the dykes in Fosdyke?
 2. How many problems which required remedial work in Fosdyke, were carried out in the three years before the change to mechanical maintenance?
 3. How many problems which required remedial work in Fosdyke, have been carried out since the change to mechanical maintenance
 4. How many properties in Fosdyke which are bordered by a dyke have been affected by the need of remedial work or have brought your attention to work they believe may be required, since the change to mechanical maintenance?”
6. On 11 March 2024, the Board issued a refusal notice, citing section 14 of FOIA. It said that it was the fifth letter it had received from the complainant about the same subject, and that it considered the request to be vexatious. The Board confirmed that it did not intend to answer any further requests under FOIA.
7. On 16 March 2024, the complainant wrote to the Board, raising concerns about its response to their request. As the complainant did not receive a response, they submitted a complaint to the Commissioner about the Board’s handling of their request.
8. During the Commissioner’s investigation the Board revised its position, and issued a fresh response to the complainant’s request. It advised the complainant of the following:

“The Board have not changed from manual to mechanical maintenance in Fosdyke. The Board maintain 17.18km of drains in Fosdyke. These drains differ in size and a range of machines are used to carry out this work.

In addition to this, work may be undertaken manually if it is not possible to access a drain by machine due to restrictions.

A particular drain may be worked on by different machinery from year to year.”

9. In response to part four of the complainant's request, the Board also explained that it maintains "a system of drains and water control structures within its statutory area" and that it does not hold details of property numbers as it has no statutory duty to do so. The Board provided the complainant with a link to information published on its website, which it said set out details of the structures and drains that it maintains.

Scope of the case

10. The complainant has said that they are not satisfied with the Board's handling of their request, as it has not provided the information that they have requested, which they believe must be held.
11. The Commissioner will therefore consider whether, on the balance of probabilities, the Board holds information that falls within scope of the complainant's request.

Reasons for decision

Is the requested information environmental?

12. [Regulation 2\(1\)](#) of the EIR defines environmental information.
13. The complainant has requested information relating to the maintenance of ditches and the drainage system in Fosdyke. The Commissioner is satisfied that this information constitutes a "measure", as defined in [regulation 2\(1\)\(c\)](#) of the EIR which affects or is likely to affect the elements of the environment outlined in [regulation 2\(1\)\(a\)](#) of the EIR.
14. Therefore, the Commissioner considers that the request was for environmental information as defined by regulation 2(1) of the EIR.

Regulation 12(4)(a) – information not held

15. Regulation 5 of the EIR requires that a public authority that holds information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
16. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.

17. In scenarios where there is some dispute about whether a public authority holds relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
18. The Commissioner will consider the evidence and arguments presented by both parties. The Commissioner will also consider any reason why it is inherently likely, or unlikely, that information is not held.
19. The complainant has said that they require the requested information as they believe that the Board's change from manual to mechanical maintenance of the water and drainage system in Fosdyke has caused damage, not only to the section affecting their land, but also the land of other local residents.
20. The complainant has asked the Commissioner to consider a number of points, which have been summarised as follows:
 - That they are only interested in the small number of drains that run alongside residential properties, and not those that mostly run past agricultural fields.
 - That they have been advised verbally that the maintenance work carried out on the ditch area where they reside used to be carried out manually, but that due to staff reductions, more work is now being carried out by machinery.
 - The date of the change from the use of manual to machine maintenance is important as it will allow for comparison on the amount of drainage and clearance work that is being carried out that affects the land.
 - The Board must hold details of the numbers of properties that require remedial work each year, or it would not be able to determine whether the work carried out is causing any damage to a property or to the environment.
 - As the Board is unwilling or unable to supply the date of the change that they have described in their request, they would now like details of any changes made to the use of machinery to maintain the drains at the end of their garden for the period 2020-2023.
21. The Commissioner considers there to be one objective reading of the complainant's request, that being for the date that the Board stopped using manual labour and began using machinery to carry out maintenance work, and information that is held that is directly associated with this change.

22. The Board took the same objective reading of the request, and in its most recent response to the complainant explained that as it still uses both manual labour and machinery to carry out maintenance work, the change described in all four parts of the request has not occurred.
23. It would appear from the complainant's submissions to the Commissioner that in the past the drainage system close to their land may have been cleared manually, and that more recently there has been an increase in the use of machinery to carry out the same work, which the complainant believes is having a detrimental effect on their land.
24. Having considered the information presented by the complainant, the Commissioner is mindful that they may have been hoping to receive recorded information which would evidence an increase in the use of machinery to maintain the water and drainage system close to their land. However, this is not information that, if held, would fall within the scope of the complainant's request.
25. The Board has advised the Commissioner that it does not hold records of when all of the water and drainage system maintenance in Fosdyke was carried out using only manual labour, and without machinery. However, the Board has said that it believes it is likely that machinery would have been first used in, or around, the 1940s, and that this has led to a reduction in the amount of manual work required. The Board has confirmed to the Commissioner, and to the complainant, that whilst it still uses both machinery and manual labour, the latter is only required to carry out work when restricted access means it is not possible to use machinery.
26. With regard to the specific concerns raised by the complainant about the Board's handling of their request that are summarised in paragraph 20 of this decision notice, the Commissioner has already explained to the complainant in separate correspondence that some of the information they have described does not fall within the scope of their request.
27. With regard to the points of concern raised by the complainant that are relevant to their request, the Commissioner has found no evidence which would indicate that the Board's statement that it still uses both manual labour and machinery to carry out maintenance is not accurate. He considers that it must follow that the Board cannot hold information about the effect of a change that it has not made.
28. Having considered all of the information available, the Commissioner therefore concludes that, on the balance of probabilities, the Board does not hold information that would provide an answer to parts 1 to 4 of the complainant's request.

Public interest test

29. Technically, Regulation 12(4)(a) contains a public interest test. However, the Commissioner cannot conceive of a public interest argument that would require a public authority to disclose information that it did not hold.

Right of appeal

30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF