

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

Decision notice

Date: 29 June 2016

Organisation: Duchy of Cornwall
Address: 10 Buckingham Gate
London
SW1E 6LA

Decision (including any steps ordered)

1. The complainant has requested the address and postcode of all land and buildings currently owned by the Duchy of Cornwall.
2. The Duchy of Cornwall has explained that it is not a public authority for the purposes of the EIR. It has therefore refused to respond to this request under the EIR.
3. The Commissioner's decision is that the Duchy of Cornwall is not a public authority for the purposes of the EIR. He therefore upholds Duchy's position and requires no steps to be taken in this case.

Request and response

4. On 14 April 2015, the complainant wrote to the Duchy of Cornwall and requested information in the following terms:

"A judge presiding over a First-Tier Tribunal ruled in 2011 that the Duchy of Cornwall is a public authority under the EIR [Environmental Information Regulations 2004]

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i600/20111206%20Decision%20&%20Ruling%20EA20100182.pdf>

I should therefore like to request the following information under the Environmental Information Regulations 2004:

1) The address and postcode of all land and buildings currently owned by the Duchy of Cornwall, whether freehold, leasehold, unregistered or any other form of tenure."

5. The Duchy of Cornwall responded on 20 April 2015. It stated that the First Tier Tribunal (the "FTT") decision was being appealed to the Upper Tribunal Administrative Appeals Chamber (the "UT"). The Duchy of Cornwall confirmed that until the outcome of the UT appeal was known it was not a public authority as per the terms of the EIR and so was not required to respond to requests for information within the stipulations of the legislation.
6. Following a review the Duchy of Cornwall wrote to the complainant on 7 May 2015. It upheld the view outlined in its correspondence of 20 April 2015.

Scope of the case

7. The complainant contacted the Commissioner 8 May 2015 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be concerned with the question of whether Duchy of Cornwall is a public authority for the purposes of the EIR.
9. In the case of *Fish Legal v Information Commissioner & Others* (GIA/0979/2011 & GIA/0980/2011) ("Fish Legal"), the UT ruled that the Commissioner has jurisdiction to both investigate and decide whether a body is a public authority.
10. In the recent case of *the Attorney General for the Prince of Wales v the IC and Mr Michael Bruton* (GIA 158 2012) ("Bruton decision"), the UT decided that the Duchy of Cornwall is not a public authority for the purposes of the EIR aside from the Duke of Cornwall's functions as a port authority.¹ The UT judgment in this case is binding on the Commissioner and so his decision must be in accordance with that of the UT.

¹ <http://www.osspsc.gov.uk/judgmentfiles/j4815/GIA%200158%202012-00.doc>

Reasons for decision

11. The EIR gives members of the public the right to access environmental information held by the vast majority of public authorities and places a duty on public authorities to respond to requests for environmental information.
12. If a public authority receives a request for environmental information they are legally obliged to provide it, usually within 20 working days, unless any of the exceptions contained within the EIR apply. If a public authority believes an exception does apply to the information that has been requested, then the public authority must explain why the exception applies.
13. The definition of public authority is given in Regulation 2(2) of the EIR. The definition of "public authority" means the vast majority of public authorities as defined in Section 3 of the Freedom of Information Act 2000 and:
 - (c) any other body or other person, that carries out functions of public administration; and
 - (d) any other body or other person that is under the control of a public authority and:
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.
14. In considering the question of whether Duchy of Cornwall is a public authority for the purposes of the EIR, it must therefore be established whether the Duchy of Cornwall has functions of public administration or is under the control of a public authority.
15. A key consideration for the UT in the Bruton decision was whether regulation 2(2)(c) could be said to apply to the Duchy of Cornwall. The UT considered the tests established in the Fish Legal case.
16. The UT in Bruton found that the Duchy of Cornwall did not have a legal personality and was not a public authority under any of the provisions of the EIR. They found that the Duke of Cornwall is a public authority in his functions as a statutory harbour and his obligations as a public authority are limited to the environmental information he holds as a harbour authority.

17. In the present case the complainant has requested information relating to the Duchy's records of land ownership and this does not relate to the harbour authority function.
18. In accordance with the UT's findings, the Commissioner's decision is that the Duchy of Cornwall is not a public authority for the purposes of the EIR. As such, it is not obliged to respond to the complainant's request under the provisions of this legislation.

Right of appeal

19. 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

20. 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.
21. 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

Steve Wood
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF