

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

Decision notice

Date: 25 May 2018

Public Authority: Conservators of Therfield Heath and Greens
Address: clerk.conservators.therfield@gmail.com

Decision (including any steps ordered)

1. The complainant has requested from the Conservators of Therfield Heath and Greens ('the Conservators') its full accounts or all information relating to its income and expenditure.
2. The Commissioner has previously established that the Conservators are a public authority for the purposes of the EIR. Her decision in this case is that, if it were held, at least some of the requested information would be environmental information but that the Conservators do not hold information falling within the scope of the request.
3. The Commissioner does not require the Conservators to take any steps.

Request and response

4. By way of background, a brief history of the Conservators and their relationship to the Therfield Regulation Trust ('the Trust') is given in paragraph 7 of FER0688548 - referred to in paragraph 14. The Trust is a charity whose trustees are the Conservators. The Trust owns Therfield Heath and Greens and the elected Conservators are responsible for managing this land. What it is important to note is that the two bodies – the Conservators and the Trust – are two distinct legal bodies.
5. On 7 June 2017, the complainant submitted his request for information in the following terms:

"Under the Environment Information Regulation 2004 I request a copy of the full accounts, (or if no such accounts are kept ALL information relating to the income and expenditure), of the Conservators of Therfield Heath and Greens from 2010 to the present day.

If possible I would like the data in electronic form preferably Microsoft excel but in any case a form that allows cutting and pasting of the figures using Microsoft office."

6. The complainant did not specify whether his request was to the Conservators or to the Trust.
7. The complainant received a response from the Clerk on 17 June 2017. He did not made clear whether he was responding on behalf of the Conservators or the Trust. The Commissioner acknowledges that in the normal course of business there is often no distinction made between the two bodies. Although in many cases it is not necessary to do so, in some circumstances this can cause confusion. In this case, having assessed their email exchanges, the Commissioner takes the view that the Clerk corresponded with the complainant on behalf of the Conservators.
8. The Conservators said the accounts of the Therfield Regulation Trust are available on the Charity Commission's website. They also provided further information about payments received from North Hertfordshire District Council regarding a particular piece of land.
9. Further correspondence followed. Over the course of this correspondence the Conservators confirmed that they have no income, no bank account, no petty cash and therefore do not make any payments. They confirmed again that they have no accounts and that the accounts published by the Trust cover all transactions relating to Therfield Heath and Greens.
10. In an email to the Conservators dated 23 October 2017 the complainant, noting the Trust's published accounts, expressed concern at what he considered to be a conflation between the Conservators and the Trust. The complainant confirmed that his request concerns the Conservators and not the Trust and disputed that the Conservators do not have their own accounts.
11. Following a formal internal review the Conservators wrote to the complainant on 5 December 2017. They confirmed that the Trust's accounts published on the Charity Commission's website relate to the Conservators' income and expenditure. The Conservators considered that all the information the complainant has requested for the period from 2012 is available on that website. The Conservators released to

the complainant copies of the Trust's accounts from 2010 and 2011 which they had identified are not published on the Charity Commission's website.

12. The Conservators attempted to clarify the structure existing between it and the Trust and confirmed that the Conservators hold three roles: statutory managers, managing trustees and property-holding trustees. They confirmed that the published accounts are those of the Trust, that the Conservators are mentioned on these accounts, that the assets managed by the Conservators are held by the Trust and that the Conservators do not have separate income, expenditure or any bank account of their own.

Scope of the case

13. The complainant contacted the Commissioner on 31 October 2017 to complain about the way his request for information had been handled.
14. In her decision in FER0688548¹ the Commissioner has established that the Conservators are a public authority for the purposes of the EIR.
15. At issue in this case, therefore, is whether the information the complainant has requested is environmental information. If the Commissioner finds that it *is* environmental information, she must next consider whether the Conservators hold this information and, if so, whether or not they are obliged to release it.
16. If the Commissioner finds that the information is not environmental information, it will not be necessary for the Conservators to take any action.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172493/fer0688548.pdf>

Reasons for decision

Regulation 2 – Interpretation (environmental information)

17. The requested information in this case is Conservators' account information or information on the Conservators' income and expenditure.
18. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR if it meets the definition set out in regulation 2(1)(a) to 2(1)(f).
19. Regulation 2(1)(c) appears to have most relevance in this case. Regulation 2(1)(c) says that information is environmental information if it concerns measures (such as policies, legislation, plans and programmes) or activities affecting or likely to affect the elements and factors referred to in regulations 2(1)(a) and 2(1)(b).
20. Regulation 2(1)(c) was discussed in FER0688548. The information requested in that case concerned the election of trustees for the associated body, the Trust. The Commissioner found that, because management of Therfield Heath and Greens rests with the Conservators, the election of trustees to the Trust was not a measure affecting the environment.
21. The Commissioner has also published guidance on what is environmental information. In that guidance she discusses another case: FER0148337². The information requested in that case included a schedule of all payments made to the Verderers of the New Forest under the Countryside Stewardship Scheme. The Commissioner determined that the Countryside Stewardship Scheme was a measure affecting the environment and that therefore the requested information was environmental information.
22. In its communications with the Commissioner, the Conservators have indicated that, via the Trust, it has received payments from Defra (through Natural England/Rural Payments Agency) under the Environmental Stewardship scheme.

² https://ico.org.uk/media/action-weve-taken/decision-notice/2008/426916/fer_0148337.pdf

23. Reviewing transactions in, as an example, the Trust's 2016 accounts, the Commissioner notes receipts under 'Miscellaneous'. Included under this heading are 'Grants' and 'NE HLS/RPA income'. The Commissioner understands the latter to stand for 'Natural England Higher Level Stewardship/Rural Payments Agency'.
24. As such information has previously been found to be environmental information the Commissioner is satisfied that, in this case, information associated with the Environmental Stewardship scheme – or any other grants associated with the environment – is environmental information.
25. Other receipts listed in the 2016 accounts include amounts received through rents, lettings and investments. Payments in the 2016 accounts include remuneration for the Clerk, administration, charitable support and works such as grass cutting and digger hire.
26. The Commissioner is inclined to the view that information on rents and lettings is information on measures likely to affect the elements of the environment, as is information on expenditure on works activities such as grass cutting, digger hire or planning permissions.
27. The Commissioner considers that some receipts information, namely information on investments, can be less clearly categorised as environmental information under regulation 2(1)(c). Similarly, administrative expenditure, such as on the Clerk's remuneration, stationary and insurance, is less clearly environmental information. All this information is, however, published on the Charity Commission's website.
28. The Commissioner is aware that the information she has considered above is account information that the Trust holds. Taking a pragmatic approach and taking account of the material the complainant has referred to in paragraph 33, the Commissioner has assumed that, if held, the majority of the information falling within the scope of the complainant's request – which concerns the Conservators' accounts or income/expenditure - would be similar to the information held by the Trust and that at least some of it would be likely to be environmental information under regulation 2(1)(c), and so would be covered by the EIR.

Regulation 12(4)(a) – Information that is not held

29. 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.
30. The Commissioner notes that the complainant's request is a request, first, for the Conservators' accounts. A second element of the request

indicates that if no such accounts exist, then the request is for all information relating to the Conservators' income and expenditure.

31. As has been discussed, this case has been complicated by no distinction having been made between the Conservators and the Trust in the correspondence between the complainant and the Conservators, or Trust. The Commissioner has reviewed this correspondence and notes that, while on 23 October 2017 the complainant confirmed that his request concerned the Conservators, he did not make it clear in his initial request or request for an internal review whether his request was *to* the Conservators or *to* the Trust. Likewise, in its responses the Conservators do not make it clear that it is responding and not the Trust. However, in correspondence to the Commissioner the complainant has subsequently confirmed that his request was NOT to the Trust. The request must therefore have been directed to the Conservators.
32. In correspondence to the Commissioner dated 23 October 2017 the complainant disputes that the Conservators – as a distinct legal entity – do not hold information that relates to their own income and expenditure. He has argued that *"...evidence about income exists"* and that *"the Conservators [as distinct from the Trust] ...have monetary income from a HLS scheme"*.
33. The evidence the complainant provided to the Commissioner includes a Natural England Environmental Stewardship agreement which is in the name of the Conservators. The complainant says he is also aware of a village green registered as VG69 that is owned by the Conservators. In his view the Conservators, like any land owner, would necessarily have income and expenditure relating to their management of this asset. Finally the complainant says he is aware of other expenditure concerning the Conservators; namely legal costs, the costs of a planning permission and invoices relating to day to day management of Therfield Heath and Greens. This material suggests to the complainant that the Conservators do have expenses and do hold information about these expenses.
34. It is not the Commissioner's role to consider whether, given the association between the Conservators and the Trust (and the trustees), financial accounts should or should not be presented in a particular way. Nor is it her role to consider possible shortcomings, if any, in the two organisations' accounting arrangements or in the way distinctions are made, or not made, generally between the two bodies. As previously mentioned, the complainant submitted his request to the Conservators and the request concerns the Conservators' accounts or income and expenditure. The Commissioner's role now is simply to consider whether, at the time of the complainant's request to them, the

Conservators did or did not hold information falling within the scope of the request.

35. In their submission to the Commissioner, the Conservators have confirmed that it and the Trust are two separate bodies; with the Trust being a registered charity that owns Therfield Heath and Greens, and the Conservators managing Therfield Heath and Greens.
36. The Conservators have confirmed that they do not have an income stream, that the accounts the complainant is seeking are published on the Charity Commission website and that they clearly show the income and expenditure (of the Conservators).
37. The Conservators have noted that the working accounts (of the Trust) for the year ending 31 December 2017 show:
 - income received from the Rural Payments Agency
 - income from the Therfield and Kelshall Sports Club as rent for the recreation ground (which the complainant has referred to); and
 - expenditure by the Trust in applying for planning permission, and in the deregistration of part of Therfield Heath.

The Commissioner was provided with a copy of these working accounts and she has reviewed them.

38. As has been established, these are the Trust's working accounts and, as they are working accounts, they are not currently published on the Charity Commission's website. The Conservators are not obliged to release this particular information to the complainant as it is information that the Trust holds.
39. The Commissioner is aware that the Conservators released to the complainant information associated with the Trust (the Trust's accounts for 2010 and 2011). The Conservators were not obliged to do this as this was information held by the Trust and not the Conservators.
40. Having considered all the correspondence and the circumstances of this case, the Commissioner has not been persuaded that the Conservators – as their own distinct body – have their own accounts, have their own income or their own expenditure that is separate from the Trust. She is satisfied that the Trust's published accounts include the Conservators' income and expenditure. The Commissioner has considered the complainant's arguments but the Conservators have stated that they do not have their own bank account or income stream and the Commissioner sees no reason to doubt that this is the case. As such, the Commissioner's decision is that the Conservators do not hold the

information that the complainant is seeking and is entitled to rely on regulation 12(4)(a).

Other matters

Regulation 10 – Transfer of a request

41. In cases where a public authority does not hold information that an applicant has requested but knows which authority does hold it, regulation 10(1) of the EIR obliges the authority to transfer the request to that authority or provide the applicant with that authority's contact details.
42. The Complainant has requested the Conservators' financial information and the Commissioner notes that she has found that this information is not held/does not exist. It is therefore not possible to direct someone to information that does not exist. That said, and in the event that the Trust is a public authority for the purposes of the EIR, the Commissioner also notes that the Conservators had directed the complainant to where the Trust had published information that is relevant to information that the complainant is seeking – the Charity Commission's website (in addition to information for 2010 and 2011 being released). She finds that the Conservators have not breached regulation 10(1).
43. Finally, the Conservators have told the Commissioner that they are willing to meet the complainant with their auditors to further explain the financial arrangements between the Conservators and the Trust. The Commissioner considers that this would be a helpful step that the complainant might want to consider taking.

Right of appeal

44. 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

45. 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.
46. 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

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