

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

Date: 6 June 2018

Public Authority: Welwyn and Hatfield Borough Council
Address: Council Offices
The Campus
Welwyn Garden City
Hertfordshire
AL8 6AE

Decision (including any steps ordered)

1. The complainant has requested recorded information which relates to the Panshanger Gold Course at Old Herts Lane, Welwyn Garden City. The information the complainant seeks concerns health and safety assessments made at the golf course, together with detailed information about the maintenance of the golf course. The Council has provided the complainant with some information falling within the scope of his requests and it has informed the complainant that some of the information he has asked for is not held by the Council, but by Finesse Leisure Limited for its own purposes.
2. The Commissioner's decision is that under regulation 3(2)(b) of the EIR, the Council does not hold the information which the complainant has asked for and therefore the Council has complied with Regulation 5(1) of the EIR. The Commissioner has decided that where information, which is relevant to the complainant's request is held, it is held by Finesse Leisure Ltd solely for its own purposes and therefore that information is not subject to the provisions of the EIR.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. The complainant has informed the Commissioner that he has submitted 4 separate requests to the Council via the WhatDoTheyKnow website:
5. On 24 May 2017, the complainant asked the Council to supply him with:

"...the current, and past 12 months, risk assessments for the Councils' Panshanger Golf Complex."
6. The Council responded to the complainant's request on 21 June 2017 by informing him that it does not hold operational risk assessments for Panshanger Golf Course.
7. The Council explained that the risk assessments are maintained by Finesse Leisure and that it is the Council's role to audit the assessments as part of their client role. Additionally, the Council informed the complainant that the most recent audit, on 10 May 2017, confirmed there is an effective approach to risk management in place and comprehensive risk assessments have been completed. The complainant was advised to ask Finesse Leisure if they would release their risk assessments to him.
8. On 16 June 2017, the complainant submitted his second request. He asked to be supplied with the following information:

"The name of the external contractor that Panshanger Golf Complex (operated by Finesse Leisure on behalf of Welwyn Hatfield Borough Council) utilizes to action maintenance on Panshanger Golf Complex.

I would also like to know the dates external contractors were used; the number of external contractors working on each date; and the works carried out on each date by said external contractors.

Regarding the above works carried out on a said date by the external contractors, can you also break that down by works carried out by a particular hole.

Regarding the above breakdown by works carried out on a particular hole, can you break that down into works carried out on the tee; fairway; individual bunkers [describe which one(s)], the rough of a particular hole; and the connecting paths of a particular hole and if no works were carried out on a hole's particular tee; fairway; individual bunkers [describe which one(s)], the rough of a particular hole; and the connecting paths of a particular hole, to indicate this.

Regarding the above works carried out on an individual hole's tee; fairway; individual bunkers [describe which one(s)], the rough of a

particular hole; and the connecting paths of a particular hole, can you describe the aim of the works and what specific actions/tasks where undertaken to attain those aims. For instance, whether bunkers where raked by machine and/or by hand; how many man-hours of maintenance was spent on each bunker raking by machine and/or by hand; any metrics taken such as sand depth measurements; and whether stone removal took place on a particular bunker.

Regarding the above works carried out on an individual holes' tee; fairway; individual bunkers [describe which one(s)]. The rough of a particular hole, can you describe whether (and if so where) any animal-created holes where filled in/maintained.

Regarding the above works carried out by external contractors, can you provide any reports utilized such as risk assessments for said works."

The Council made its response to Mr Price's second request on 14 July 2017, refusing to supply the information he had asked for in reliance on Regulation 12(4)(b) of the EIR, due to his request being "manifestly unreasonable on the grounds of costs and diversion of resources".

9. On 20 June 2017, the complainant submitted this third request to the Council, asking to be supplied with:

"...the names of persons working at Panshanger Golf Complex and Panshanger Golf Complex external contractor whom manage and/or maintain Panshanger Golf Complex.

I would like a list of job titles and responsibilities for those persons working at Panshanger Golf Complex and the external contractors Panshanger Golf Complex utilizes who manage and/or maintain Panshanger Gold Complex, detailing which job titles have what responsibilities.

I would like a list of the valid and up to date certifications for each position by job titles and responsibilities.

I would like a details of whom work on each day for the past 14 months and the works they carried out for those days for the past 14 months.

I would like detail of absences, namely, which persons / job titles were off work on each day for the past 14 months, and whom, if anybody, assumed that persons responsibilities."

10. The Council responded to the complainant's request on 19 July. The Council informed the complainant that it would not release the information to him on the grounds that his request is considered manifestly unreasonable and therefore subject to Regulation 12(4)(b) of the EIR. Additionally, the Council informed the complainant that parts of his request attract Regulation 13 of the EIR, as the requested information constitutes the personal data of third parties.

11. The complainant submitted his fourth request to the Council on 21 June 2017. He also challenged the Council's position regarding the status of the risk assessments made in respect of a Council owned Golf Complex. The complainant requested:

"all documentation / notes utilized in The Council's audit of 10th May 2017, at the end of which The Council concluded there is an effective approach to risk management and comprehensive risk assessments."

12. On 23 June 2017, the complainant wrote to the Council and asked it to review its handling of his information request. The complainant stated, "I do not feel my request has been satisfied as I believe Welwyn Hatfield Borough Council, as the owner of and therefore 'Occupier' (Occupiers Liability Act 1984) of Panshanger Golf Complex, should be able to pass on to me all risk assessments I have requested" and he referred the Council to *Bowen (a Child) and others v The National Trust*, which he asserted makes clear that Occupiers such as Welwyn Hatfield Borough Council have a 'common duty of care' in respect to the safety of visitors using the premises for the purpose he is invited or permitted by the occupier to use them.

13. On 29 June 2017, the Council wrote to the complainant and advised him that it does not hold STRI¹ reports for Panshanger Golf Course as these were commissioned by Finesse Leisure.

14. On 7 August 2017, the Council wrote to the complainant to advise him of its final decision made in respect of all four of his requests.

15. The Council confirmed that it does not hold the risk assessments and STRI reports for Panshanger Golf Course. Having considered all four of the complainant's requests together, the Council concluded that each of request fell to be considered under the EIR.

16. On the grounds that Finesse Leisure hold some of the information for its own purposes, and that Regulation 2(2) may apply to Finesse Leisure,

¹ Sports Turf Research Institute reports

the Council advised the complainant that Finesse Leisure may have a responsibility under the EIR to provide the information he had requested.

17. In respect of the complainant's request for details of the works carried out by external contractors, the Council confirmed that this information is being refused under Regulation 12(4)(b) on the grounds that "the time taken to complete it is excessive".
18. The Council confirmed that staff roles and responsibilities are considered as being personal information and therefore subject to its application of Regulation 13 and finally the Council determined that the audits it holds, which were carried out by the Councils Health & Safety Officer are clearly held by the Council and therefore these should be released.

Scope of the case

19. The complainant contacted the Commissioner 30 August 2018 to complain about the way his request for information had been handled. The complainant asked the Commissioner to review his concerns regarding his four requests for information. He asserted his opinion that the Council should be able to provide the information he has requested and that the information the Council has provided is only partial and inadequate.
20. The focus of the Commissioner's investigation was to determine whether the Council has handled the complainant's request in accordance with the EIR, and specifically to determine whether the Council has correctly applied the exceptions to disclosure provided by Regulations 12(4)(b) and 13 of the EIR.

Reasons for decision

Is the requested information environmental information?

21. Information is 'environmental information' if it meets the definition set out in Regulation 2 of the EIR. If the information satisfies that definition it must be considered for disclosure under the terms of the EIR rather than those of the FOIA.
22. The Council's Freedom of Information Office received all of the complainant's requests and was required to determine whether they should be treated under the FOI or EIR legislation. As all four of the complainant's requests have all been about health and safety issues at Panshanger Golf Course, the Council concluded that the requests should be considered under the EIR.

23. The Council's reasons for concluding that the request fell to be considered under the EIR are that health and safety aspects at the Panshanger Golf Course are clearly affected by environmental factors – such as the state of bunkers, fairways, greens, rough areas and trees, which all pose risks to the golfers using the course.
24. At internal review, the Council's Director of Public Protection, Planning & Governance and its Head of Law & Administration (who is also the Council's Monitoring Officer) confirmed that the complainant's requests should be handled under EIR.
25. The Council accepts that two of the complainant's requests which concern external contractors, details of maintenance and staff roles and responsibilities, are requests under FOI. Nevertheless, the Council argues that since the ultimate aim of the complainant's four requests is to probe into the health and safety at the course, they are all inherently linked. The Council internal review panel therefore felt that it was pragmatic to treat all of the complainant's requests under the EIR.
26. Notwithstanding this position, the Council hold the position that the information requested by the complainant is not held by the Council but is held by Finesse Leisure.

Is the information held by the Council?

27. Under Regulation 3(2)(b) of the EIR, environmental information is held by a public authority if it is in the authority's possession and has been produced or received by the authority; or if it is held by another person on behalf of the authority.
28. In this case, the Council strongly asserts that it does not hold the information which the complainant has asked for. It says that there is no requirement for it to hold that information and the Council has informed the Commissioner that the information is held by Finesse Leisure as part of its running of the contract for Panshanger Golf Course.
29. The Council asserts that it does not require this information to be held by Finesse Leisure and that the Council is clear that the information held by Finesse Leisure is for the purpose of running the golf course and the Council does not see this information or what it contains.
30. In two of the complainant's four requests (concerning risk assessments and STRI data) the Council has confirmed there are specific reports held by Finesse for its own purposes. The Council has confirmed to the Commissioner that the complainant has asked for copies of these reports and therefore it asserts there is no way the Council can help him refine his request.

31. In the case of the complainant's two other requests (contractors, maintenance, staff roles and responsibilities), the complainant has been advised that to gather this information would take a lot of time and resources. Finesse Leisure believes that the complainant's request is unreasonable. Finesse Leisure has not advised the complainant to refine his request because it recognises that no other information would meet the complainant's needs, other than the detailed information he has already asked for.

The Commissioner's conclusions and decision

32. The Commissioner has considered the Council's representations in this matter. The Commissioner has decided to accept the Council's strongly made assertion that it does not hold any of the information which the complainant has asked for other than the information it has already provided. The Commissioner accepts that, where relevant information is held, it is held by Finesse Leisure for its own purposes.
33. Since Finesse Leisure is not a public authority any information held by that company for its own purposes is not held on behalf of the Council.
34. The Commissioner's decision is that the Council has complied with Regulation 5(1) of the EIR. In view of this decision the Commissioner has not gone on to consider the Council's application of Regulation 13 in respect of the information which it considers is the personal data of the employees and appointed contractors of Finesse Leisure, which in any event is held by Finesse Leisure for its own purposes.

Right of appeal

35. 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

36. 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.
37. 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

Andrew White
Group Manager
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