

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

Date: 15 February 2024

Public Authority: Historic England
Address: The Engine House
Fire Fly Avenue
Swindon
SN2 2EH

Decision (including any steps ordered)

1. The complainant submitted a request to Historic England seeking information it held about chemicals at the Sutton Walls site. Historic England located one letter which it eventually disclosed to the complainant. The complainant subsequently argued that Historic England was likely to hold further information falling within the scope of his request.
2. The Commissioner's decision is that on the balance of probabilities Historic England does not hold any further information falling within the scope of the request beyond the letter that has now been disclosed to the complainant.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to Historic England on 12 July 2023:

“Noting the pile of consignment notes evidencing extensive toxic chemical and acid tipping at Sutton Walls including from Monsanto’s Newport and Ruabon factories:

[1] Which consultancy firm has given Historic England safety advice about public access at this site and advice about the impact of badger breach of the capping near the area of regular noxious fumes egress across the footpath?

[2] Please release all advice received about Sutton Walls chemicals.”

5. Historic England responded on 2 August 2023 and explained that it did not hold any information falling within the scope of this request and therefore the request was refused on the basis of regulation 12(4)(a) of the EIR.
6. The complainant contacted Historic England on the same day and asked it to conduct an internal review of this refusal.
7. Historic England informed him of the outcome of the internal review on 7 September 2023. With regard to part [1] of the request, it restated its position that did not hold any information. With regard to part [2] of the request, Historic England confirmed that it did hold relevant information. However, it considered this to be exempt from disclosure on the basis of regulation 12(5)(f) (interests of the person who provided the information to the public authority).

Scope of the case

8. The complainant contacted the Commissioner on 12 September 2023 in order to complain about the Historic England’s decision to withhold information on the basis regulation 12(5)(f).
9. The Commissioner contacted Historic England and highlighted that regulation 12(9) of the EIR meant that certain exceptions within the legislation, including regulation 12(5)(f), could not be relied upon if the information constituted information on emissions. The Commissioner asked Historic England to consider the relevance of regulation 12(9) to this request. Historic England subsequently revised its position and on 1 December 2023 provided the complainant with a copy of the information that it had previously withheld, with personal data redacted on the basis of regulation 12(3). The information in question consisted of a copy of a letter from Herefordshire Council to a third party (ie not Historic England) dated 28 July 2016.

10. The Commissioner contacted the complainant at this point to establish if he was content to withdraw his complaint. The complainant explained that in his view it was likely that Historic England held further information falling within the scope of his request.
11. This decision notice therefore considers whether Historic England holds any further information falling within the scope of this request, beyond that which has now been disclosed to the complainant.

Reasons for decision

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

12. 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 that information when an applicant’s request is received”.
13. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request. Or as in this case, whether it has located all of the information falling within the scope of the request.

The complainant’s position

14. In support of his position that Historic England holds further information falling within the scope of the request the complainant raised two points:
15. Firstly, that the released information does not refer to recent documentation evidenced elsewhere. He cited the following document issued by the Sutton Walls Conservation Group as evidence of this.¹
16. Secondly, he noted that the released letter is dated 2016 and the evidence to which it refers dates back to 2013. As a result there is a significant time gap between these dates and the date of his request. In his view, this suggests that Historic England would be likely to hold more recent information.

¹ https://www.suttonwalls.co.uk/files/ugd/20ad35_19f2fcf1416e46a1a4ef7eab69b8fa3d.pdf

Historic England's position

17. As part of his investigation as to whether it held any further information falling within the scope of this request the Commissioner asked Historic England to respond to a number of questions. The Commissioner has replicated these questions, and summarised Historic England's responses, below.
18. **Question:** Please provide any comments Historic England has on the complainant's grounds of complaint and why, in his view, further information is likely to be held.

Answer: With regard to the first ground of complaint, Historic England explained that it had reviewed the information contained at footnote 1. Historic England noted that it related to the Heritage at Risk register. Historic England explained that the Heritage at Risk programme protects and manages the historic environment by working with owners and stakeholders to prevent the loss of sites through neglect, decay or inappropriate development. It is not concerned with elements of the natural environment, such as the presence of chemicals, but rather the historic fabric of the site.

Historic England acknowledged that the quote by the Sutton Walls Conservation Group Chair contained in the document does imply that Historic England has given ecological advice, but this was not in fact the case. (Historic England noted that page 1 of the document contains an explanation by its regional director, Louise Brennan, that better explains its remit.)

With regard to the second ground of complaint, Historic England explained that it had only been passed a copy of the letter for reference. Historic England explained that it would not have requested this as part of its normal processes (which is why it initially considered the exemption for volunteered information). Given that Historic England is not a party to the letter it was unable to address any 'gaps' as this is the only letter it had been given sight of. Historic England suggested that as authors of the document, Herefordshire Council would be better placed to assist.

Historic England explained that given the passage of time, it was unable to be certain as to the exact circumstances in which this particular letter was passed to it. However, it noted that it is common for people to provide it with documentation that they think might be helpful but ultimately fall outside of its remit and therefore interest.

19. **Question:** Please explain the connection between Historic England and the Sutton Walls Conservation Group.

Answer: Historic England has provided grants to the Sutton Walls Conservation Group in order to assist them in addressing the heritage at risk at Sutton Walls. Historic England is able to provide grants to trusts, charities, owners, local authorities and others to help them tackle heritage at risk matters, however as explained above, this relates to the historic fabric of the monument.

20. **Question:** What searches have been carried out to locate information falling within the scope of the request and why would these searches have been likely to retrieve all relevant information?

Answer: The information was either held electronically in Historic England's case management systems or historic papers, which are located in archive files. Historic England explained that the regional team ran a search of their electronic files and its central team ran an initial search of the paper files. For the initial request, it was determined that the letter in question fell outside of scope as it was not advice Historic England had received directly from a consultancy firm. During the review process, the letter was determined to be in 'in scope', as it fell into the latter part of the request, and a second search was run, including retrieving all the paper files from archive. Both searches were run by opening up the paper and electronic files and going through them manually.

21. **Question:** Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

Answer: Historic England's Information Management team consulted with the regional team who are responsible for heritage assets in this area, including Sutton Walls and asked them if they held any information that fell within scope. Historic England explained that they are familiar with the site and advised that environmental matters fall outside the organisation's remit, but drew attention to the letter in question which had been sent for information.

22. **Question:** If searches included electronic data, which search terms were used and please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

Answer: Historic England explained that any data held electronically is either on its shared systems, Concise and the Heritage at Risk Database, or in emails which are searchable by using the term 'Sutton Walls'. Concise and the Heritage at Risk database are both case management systems that store information that relates to casework. Concise holds general records for the site and the Heritage at Risk

database covers casework relating to monuments on the Heritage at Risk Register. Historic England explained that its case management systems run on organising information by site, so search terms would not be used in this instance. Instead the user would open up and check through the database folder for Sutton Walls.

23. **Question:** If the information were held would it be held as manual or electronic records?

Answer: Historic England explained that it holds information in paper files for Sutton Walls, which date to the time the site was designated. These were checked and this is where the letter was stored. It explained that it also holds grants files which were on paper until 2000 and then logged electronically. Both the paper files and electronic files on the case management systems but did not locate any advice, other than the letter in question.

24. **Question:** Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

Answer: No.

25. **Question:** If recorded information was held but is no longer held, when did the Historic England cease to retain this information?

Answer: As above (ie no).

26. **Question:** Is there a business purpose for which the requested information should be held? If so what is this purpose?

Answer: There is no business purpose for the information in question as commissioning advice or otherwise dealing with such waste falls outside of Historic England's organisational remit.

27. **Question:** Are there any statutory requirements upon Historic England to retain the requested information?

Answer: As above (ie no).

The Commissioner's position

28. Having considered Historic England's submissions the Commissioner is satisfied that, on the balance probabilities, it does not hold any further information falling within the scope of this request. The Commissioner has reached this decision based on three factors. Firstly, given Historic England's remit it has no business need, or statutory requirement, to hold information of the nature sought by the request. Secondly, the Commissioner considers the searches undertaken by Historic England to

locate any potentially relevant information to be focused and thorough. This provides the Commissioner with reassurance that if further information was held, then it would have been found. Thirdly, the Commissioner notes that the letter in the scope of the request which has been found was passed to Historic England simply for information only and apparently on an ad hoc basis. As a result just because this letter is held, in the Commissioner's view this does not provide any reason why further information of the nature sought by the request necessarily would be.

Right of appeal

29. 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

30. 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.
31. 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

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