

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

Date: 19 March 2024

Public Authority: Tees Valley Combined Authority
Address: Teesside Airport Business Suite
Teesside International Airport
Darlington
DL2 1NJ

Decision (including any steps ordered)

1. The complainant has requested from Tees Valley Combined Authority ('TVCA') information about a land sale at Teesworks. Although TVCA disclosed some information, it withheld some information about valuations, citing section 43 (Commercial interests) of FOIA.
2. The Commissioner's decision is that the requested information is environmental information within the definition at regulation 2(1)(c) of the EIR. The request should therefore have been handled under the EIR rather than FOIA. By failing to respond to the request within the statutory time for compliance, TVCA breached regulation 5(2) of the EIR.
3. The Commissioner requires TVCA to take the following steps to ensure compliance with the legislation.
 - Reconsider the information held under points (1), (2) and (8) of the request, under the provisions of the EIR, and issue a fresh response accordingly.
4. TVCA must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. Teesworks is a former steelworks site in Redcar. It is one of the largest brownfield sites in Europe and is being regenerated for a range of industrial and business uses.
6. TVCA is a partnership of five local authorities; Darlington, Hartlepool, Middlesbrough, Redcar & Cleveland and Stockton-on-Tees, working closely with the Local Enterprise Partnership, wider business community and other partners to lead economic development of the Tees Valley area¹.

Request and response

7. On 4 May 2023, the complainant wrote to TVCA and requested information in the following terms (numbering added):

"I'm interested in the value of the land known as the old SSI site, Tees works, and particularly the Southbank quay land which was sold for a nominal amount recently.

1. Please provide the valuation which was undertaken by estate agents Knight Frank (as reported recently in Private Eye), for land and which was subsequently sold and transferred to the new owners.
2. Please provide their valuation figures both before and after remediation of the land.
3. Who were the new owners
4. Please also provide the fees paid to Knight Frank for their services.
5. Was a value for money assessment undertaken before commissioning Knight Frank to carry out the valuation. It

¹ <https://teesvalley-ca.gov.uk/about/our-region/faqs/>

would be normal business practice to "get a couple of quotes" before deciding to go with one particular agent.

6. Which other agents were asked what they would charge to carry out the valuation.
 7. When and how was it decided/agreed to commission Knight Frank to carry out the valuation above other agents.
 8. Also provide any other land valuation that has been carried out in relation to the old SSI site, Teesworks, Southbank quay."
8. Having been asked to clarify the request the same day, the complainant added a further question:
- "9. Also, can I add who carried out the valuation"
9. TVCA contacted the complainant on 5 June 2023, stating that it required further time to consider the public interest in connection with an FOIA exemption, which it did not identify. It said it hoped to respond by 3 July 2023.
 10. TVCA responded to the request on 31 July 2023. It provided information in respect of most parts of the request. However, it refused points (1), (2) and (8) of the request under section 43(2) (Commercial interests) of FOIA.
 11. The complainant requested an internal review of TVCA's decision to refuse points (1), (2) and (8) of the request, on 11 September 2023. She disagreed that the information was commercially sensitive, citing the fact that the sale had already taken place and public comments, allegedly made by the mayor of the Tees Valley, that the land was sold for its market value of £15m.
 12. TVCA provided the internal review on 6 October 2023. It maintained that section 43 of FOIA had been correctly applied to refuse points (1), (2) and (8) of the request.

Scope of the case

13. The complainant contacted the Commissioner on 19 October 2023 to complain about the way her request for information had been handled. In line with her request for an internal review, she disagreed with TVCA's stance that the withheld information was confidential, arguing

that the sale had been completed and information about the sale price had since been disclosed in public statements by officials and politicians.

14. This decision notice considers whether the request for information has been correctly handled by TVCA, including whether or not the information is environmental, and the time taken to respond.

Reasons for decision

Is the requested information environmental?

15. The Commissioner recently considered a separate request to TVCA for the draft version of the valuation report, under reference IC-253841-L8V1². In that case, he found that the request should have been dealt with under the EIR and in his decision notice he explained why and instructed TVCA to issue a fresh response to the request, under that regime.
16. When investigating this case, the Commissioner invited TVCA to consider whether this request should also have been considered under the EIR.
17. In its response, TVCA referenced the Commissioner's decision in IC-253841-L8V1, but it maintained that FOIA was the correct access regime, as the request "...pertains to valuation information and not the state of the environment" (an argument which the Commissioner had already considered and rejected in IC-253841-L8V1). However, it said it could disclose a copy of the valuation report, with some information redacted under section 43 of FOIA, if the Commissioner agreed.
18. Requests for information must be handled under the correct access regime. This is particularly important when refusing to disclose information, since the reasons why information may be withheld under FOIA (the exemptions) are different from the reasons why information may be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled. Furthermore, when considering requests under the EIR, regulation 12(2) requires public authorities to apply a presumption in favour of disclosure.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4028764/ic-253841-l8v1.pdf>

19. In view of the similarity of the request in this case, to that considered in IC-253841-L8V1, the Commissioner's decision is the same as set out in that decision notice. The full analysis is contained in the decision notice issued under that reference and will not be repeated here. The Commissioner's reasoning is summarised below.
20. If information falls within the definition of "environmental information" at regulation 2(1) of the EIR, any request for it must be considered under the EIR.
21. Regulation 2(1)(c) of the EIR applies to information on:

"(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..."
22. The Commissioner's view is that, although the withheld information concerns the valuation of land, it is nevertheless information on measures and/or activities (the sale of that land for redevelopment) which are likely to affect the elements and factors of the environment.
23. The information requested therefore falls within the definition at regulation 2(1)(c) of the EIR and the request should have been considered under the EIR.
24. TVCA must now take the steps set out in paragraph 3, above.

Procedural matters

Regulation 5(2) - Time for compliance with request

25. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."
26. Regulation 5(2) of the EIR states that:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
27. In this case, TVCA took 60 working days to respond to the request.

28. Therefore, TVCA breached regulation 5(2) by failing to disclose the requested information within 20 working days.
29. The Commissioner has made a record of this breach for monitoring purposes.

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.

Samantha Bracegirdle
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