

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 May 2014

Public Authority: East Devon District Council
Address: Council Offices
Knowle
Sidmouth
Devon
EX10 8HL

Decision (including any steps ordered)

1. The complainant has requested information with regards to a development site near to his property. He had concerns with possible landslips and pollution. East Devon District Council (the council) provided the complainant with some of the information it held, and referred him to its planning website for the remainder, relying on section 21 of the FOIA. After an internal review the council provided the complainant with hard copies of the information it held on its website, no longer relying on section 21 of the FOIA. The complainant is not satisfied that he has been provided with all the information held by the council within the scope of his request.
2. The Commissioner's decision is that, on the balance of probabilities, the council has provided the complainant with all of the information it holds within the scope of his request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 3 August 2013, the complainant wrote to the council and requested information in the following terms:

"a) Minutes of EDDC Development management Committee Meeting on Tuesday 16 July, from 2pm (13/0605/COU).

b) All information relating to the stability of the hillside, spring water and pollution, used by the first Appeals Inspector, [name redacted] predecessor, in conjunction with a former planning application for a private dwelling on this site."

c) The Geoscience Engineering Investigation Report – Stability of hillside and embankment, used by EDDC and Inspector [name redacted], in connection with the last Appeal Decision: Holiday Accommodation.

d) The Geotechnical Site Investigation Report – Identification of Contaminates used by EDDC and Inspector [name redacted]."

5. The council responded on 7 August 2013. It provided a copy of the development committee meeting minutes and a copy of the appeal decision for application 09/1265/FUL.
6. The council then refused the rest of the information under section 21 of the FOIA as it considered the rest of the information to be reasonably accessible by either accessing it on its website or making an appointment to inspect the files at its offices.
7. The complainant requested an internal review on 15 August 2014. The council responded on the 23 August 2014. It maintained that all the remaining information was accessible on its planning website or by coming into the offices. It also no longer relied on section 21 of the FOIA, instead it printed off the documents and sent them to him.

Scope of the case

8. The complainant contacted the Commissioner as he did not consider that he had been provided with all the information within the scope of his request.
9. The Commissioner considers the scope of the case is to determine whether or not the council has provided all of the information it holds within the scope of the request.

Reasons for decision

Is the request for environmental information under the EIR?

10. The appropriate regime for information that is "environmental" is the EIR. Environmental information is defined by regulation 2 of the EIR. Regulation 2(1)(c) of the EIR provides that any information affecting or likely to affect the elements and factors of the environment will be environmental.
11. In the Commissioner's view, this request should be considered under the EIR, as it is a request for information about the land and landscape and concerns over its stability and pollution. These are matters that affect the environment.

Regulation 5(1) of the EIR

12. Regulation 5(1) of the EIR requires a public authority to make available environmental information on request, subject to exceptions in regulation 12 of the EIR.
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, applies the civil standard of the balance of probabilities. The Commissioner must decide whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
14. The complainant has advised the Commissioner where he considers that the council has not provided all the information he requested. The Commissioner addressed these areas with the council as well as asking it to respond to the Commissioner's investigations to determine if there is any further information and also how it holds and records this type of information.
15. The complainant identified to the Commissioner the following as being information he considered to still be missing:

"My request – key documents still missing

On 3 August 2013, I requested information that included the following description:

1) All information relating to the stability of the hillside, spring water and pollution, used by the first Appeals Inspectors, [name redacted] predecessors, in conjunction with former planning applications on this, or an abutting site.

2) The Geoscience Engineering Investigation Report – Stability of hillside and embankment, used by EDDC and Inspector [name

redacted], in connection with the last Appeal Decision: Holiday Accommodation.

3) The Geotechnical Site Investigation Report – Identification of Contaminates used by Inspector [name redacted].

Specific documents included within my request, but still missing

4) Statutory Prescribed Forms for the development of 'Disused Quarry Tips'

5) Structural Survey on the existing building – a mid 1970s shed – also known as the stable

6) Statement confirming the date when the EDDC Contaminated Land Officer first visited this site

7) Copy of planning consent and conditions"

16. The Commissioner asked the council to state whether or not it held the information with regards to these 7 specific points.
17. The council responded to each point. For point 1, the council stated that there is nothing specific held on the planning file related to this but paragraph 8 of the inspector's decision deals with the structural aspects and paragraph 20 is about geological and other aspects.
18. For point 2, the council has advised that they do not hold such a report and nothing on its file suggests such a report was commissioned.
19. For point 3, the council has stated it does not hold this information and it was not necessary for a condition of approval.
20. For point 4, no information is held.
21. For point 5, the council state that this is available online.
22. For point 6, the council confirmed that no statement is held. Although the council has stated that the contaminated land officer has been in touch with the complainant directly.
23. For point 7, the council state that this is available online.
24. The council has also advised the Commissioner of its planning document scanning and retention policies. It states that its planning documents have to be kept permanently in line with legislation.

25. The council states that it is currently going through a back scanning process, as well as scanning in new documents daily. It states that for current or in progress applications, it keeps what is submitted by the applicant. If anything is submitted via the planning portal, then one copy of the plans are printed off, but the council does not always print off supporting documents as they are viewable on its own system and the website.
26. The council further explained that letters of representation are date stamped, seen by an officer and then sent for scanning. Scanned letters are then recycled.
27. Once a decision is issued, the paper file is held for a minimum of six months, checked to make sure all the documents have been scanned on to the system and it keeps a paper copy of the approved/ refused plans.
28. The council has also informed the Commissioner that documents from 1974 -1987 are still in paper form and being back scanned. 1988-2005, all documents have been scanned and copies are either held on disc or scanned to the corporate data management system. 2006-current, there are some paper documents and partially scanned documents.
29. The council has advised the Commissioner that it is not aware of any information relating to these applications being destroyed. It maintains that all relevant documentation for this request is held on the publically available planning files which are online or can be accessed by visiting its offices.
30. The council has advised the Commissioner that with regards to further searches, it has contacted the relevant team leader of the planning team who has confirmed that there is no other documentation other than that which is publically available on the planning file. So there is nowhere else that further information could be held with regards to this request.
31. Although the council maintains that no further documents are held within the scope of the complainant's request, the council has stated that it would be happy to help Mr Frampton find any additional documents if he would like to make an appointment to visit its offices.
32. The Commissioner does appreciate that the complainant is not satisfied with what information the council states is held to what he would expect there to be held. But as stated above, the Commissioner has to make his assessment based on the responses the council has provided to his investigation. He has also, from the complainant's guidance, asked the council if it holds specific information within the scope of the request. The Commissioner notes that the FOIA is concerned with recorded

information that is actually held by a public authority, rather than information which a complainant thinks should be held.

33. Therefore on considering the above, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold any further recorded information within the scope of the complainant's request.

Right of appeal

34. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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
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