

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 27 May 2014

**Public Authority:** Elmbridge Borough Council

**Address:** Civic Centre  
High Street  
Esher  
Surrey  
KT10 9SD

### **Decision (including any steps ordered)**

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1. The complainant has made two requests for information from Elmbridge Borough Council ("the council") about asbestos within specific domestic properties. The council provided some information in response, but confirmed that the majority of the requested information was not held.
2. The Commissioner's decision is that the council does not hold further information that falls within the scope of the requests.
3. The Commissioner does not require any steps to be taken.

### **Request and response**

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4. On 7 June 2013, the complainant wrote to the council and requested the following:

*"When the houses in Hurtwood Road were built. What date/year.  
In particular No's 29, 35 & 37.*

*Where is the asbestos situated in these houses and which type of  
asbestos is it? I need to know every area where it will be found.  
Eg, wall cavities, ceiling...*

*Would Elmbridge Borough Council be responsible for removing it  
for freeholders?"*

5. The council responded on 20 June 2013. It provided some information, but advised that the remainder was not held, and advised the complainant of alternative sources for enquiry.
6. The complainant made a further request on 30 August 2013 for:

*"I would ask you to advise me of exactly when Elmbridge Borough Council became aware that the houses in the Fieldcommon Lane area contained asbestos and in particular those identified Oakbank, Hurtwood and Homefield and Mellor Place."*
7. The council responded on 6 September 2013, and confirmed that it did not hold the requested information.
8. The council subsequently provided an internal review to both requests on 1 October 2013, and maintained its position that no further recorded information was held beyond that already disclosed.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 17 July 2013 to complain about the way her request for information had been handled. Specifically, she contested that the council held further information relevant to the requests.
10. The Commissioner considers that the scope of this case is the determination of whether the council fulfilled its obligations under regulation 5(1) of the EIR by providing all held information in response to the requests.

### **Reasons for decision**

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#### **Is the information environmental?**

11. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(f), any information on the state of human health and safety as affected by the factors contained in regulation 2(1)(c) will be environmental information. The contested matter relates to asbestos as a building material, which may be discharged into the environment and through that affect human health. The Commissioner therefore considers that the request should be dealt with under the EIR.

## **Regulation 5(1) – Duty to make information available on request**

12. Regulation 5(1) of the EIR states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions or exclusions that may apply.
13. The EIR provides a right of access to information in recorded form, and only that which exists at the time of the information request. The EIR does not require a public authority to generate new information, such as in the form of an explanation or opinion, in order to respond to a request.

### *The Commissioner's investigation*

14. On 18 March 2014 the Commissioner wrote to the council to request supporting evidence for its response to the complainant. The Commissioner also invited any supporting comment from the complainant on her assertion that the information should be held.

### *The council's position*

15. The council has confirmed to the Commissioner that it no longer owns a housing stock nor provides housing accommodation. It has explained that information relating to the design of the named properties during the 1970's would have been held by the council's Architects Department, which was dissolved in the 1990's with non-essential records being destroyed at the same time. Any remaining housing records would only have been retained until the council's transfer of its housing stock to a local housing trust in 2000, at which point these records would have been transferred if necessary, or else destroyed.
16. The council has further confirmed that its searches for any paper or electronic records were undertaken by a specialist manager within Housing Services whose background knowledge was most applicable to the request. This manager also consulted with officers in Building Control and Planning Services.
17. The Commissioner specifically asked whether there was a business or statutory purpose to hold the information that the complainant contests should be held. The council confirmed that it was not aware of any contemporary business purpose for which the council would now need to take steps to hold this information. Additionally, it advised the Commissioner that it was not aware of any statutory requirements upon it to hold any of the information that the complainant has requested.

### *The complainant's position*

18. The complainant has explained to the Commissioner that she is aware of local councillors having attended public meetings organised by a local housing trust about the issue of asbestos within properties, and has advised the Commissioner of the substantial public knowledge surrounding the issue.
19. The complainant has explained that she considers that regardless of whether physical records are held, the council is still aware of the wider issue, and as such is obligated to provide information in response to her requests.

*Conclusion*

20. In the circumstances of this complaint the Commissioner must decide, on the balance of probabilities, whether any further information is likely to be held by the council in relation to the complainant's request.
21. The complainant has contested that the council must have knowledge of the substantive issue through the awareness of councillors and the general public. However the terms of the EIR only relate to recorded information, and the decision to hold recorded information is likely to be based upon a business or statutory need to do so. The properties that are the basis of the request date from the 1970's, and are either now maintained by an independent housing trust or else privately owned, with the council no longer holding any form of responsibility for their ownership or maintenance. It is apparent to the Commissioner that diligent searches have been undertaken by the council for any relevant records that may still be held, and it is clear that the complainant has been referred to alternative sources at which the some recorded information may be held. Having considered these circumstances, the Commissioner has reached the conclusion that further recorded information is unlikely to be held by the council.

## Right of appeal

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22. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**