

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2012

Public Authority: The Planning Inspectorate / Department for Communities and Local Government

Address: 4/11 Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Decision (including any steps ordered)

1. The complainant requested information relating to an appeal decision report. The Planning Inspectorate responded, providing some information and advising the complainant that it did not hold additional information beyond that which has been disclosed to him. The Commissioner's decision is that the Planning Inspectorate has provided the complainant with all of the information it holds relevant to the scope of this request.
2. The Commissioner requires no steps to be taken.

Request and response

3. The complainant wrote to the Planning Inspectorate, an Executive Agency of the Department for Communities and Local Government (DCLG), on 12 October 2011 in relation to an Appeal Decision report. In that correspondence, he told the Planning Inspectorate that he considered the report in question "*to be fatally flawed*". He also commented, at some length, on the contents of the report and asked the Planning Inspectorate to respond in relation to a number of points. For example:

"I wish to know why you have omitted and ignored the issue of pedestrian traffic, particularly when it relates to school children crossing the entrance...."

There appears to be an attempt by you to present the proposed building as a one or two storey building when in fact it is a block of flats that contains four levels of accommodation and I would like your comment as to why you are trying to present the proposed building as being smaller than it actually is.

Under Reasons para. 9, 10 & 11 you deal with the question of 12 parking spaces (for twelve flats) and give reasons for providing 12 parking spaces only. Secondly you state 'there is insufficient evidence that a proposal of this size and nature and in this location would be likely to increase on-street parking pressures to levels that would endanger the safety of highway users'. ... I wish to have details of the evidence, insufficient or otherwise, that you have to support this statement.... If you could also advise where visitors and visiting tradesmen attending the proposed development will actually park?."

4. Further to that correspondence, and the Planning Inspectorate's reply (in which the Inspectorate advised the complainant about the FOIA process), the complainant wrote to the Planning Inspectorate on 15 November 2011, requesting information in the following terms:

"Secondly in terms of the contents of the Appeal Decision Report compiled by [name redacted] as a result of a site visit on 6 July 2011 with a decision date of 1 August 2011 concerning the property known as [address redacted] I require the following information, evidence and undertaking to be supplied to me as a freedom of information request in terms of the Freedom of Information Act:

- 1. A copy of the contract of employment between the Planning Inspectorate and [name redacted] in her employment as an Inspector including the details of her remuneration.*
- 2. Comment, information and evidence on all the points as mentioned and requested in my letter of 12 October addressed to [name redacted] at The Planning Inspectorate.*

In particular I require a legal, written, undertaking by the Planning Inspectorate and [name redacted] that the occupants of the flats at the proposed development will not own in total more than 12 motor vehicles and comment and evidence in support as to where visitors to the proposed development will park their motor vehicles.

- 3. In terms of the letter dated 21 October from the Planning Inspectorate as authorised by [name redacted] I require an explanation from [name redacted] as to why the information,*

evidence and undertaking originally requested in my report of 12 October was not given."

5. The Planning Inspectorate responded on 13 December 2011. It told the complainant:

"... the Freedom of Information Act 2000 and Environmental Information Regulations provide access to recorded information. Whilst you have requested that we provide comment, reasons or an explanation on the points you raise, we will simply not hold information relevant to such specific requests. We will hold the information submitted by the parties in respect of the appeal, and a copy of the Inspector's decision (which includes the Inspector's reasoning as to how the decision was reached). The respective planning legislation is already in the public domain."

6. It provided the complainant with some information relevant to his request. The complainant expressed dissatisfaction:

"Again you have failed to supply me with all of the information, evidence and undertaking originally requested in my letters.... To ensure you understand what information, evidence and undertaking I require I will again list them as follows."

7. The complainant listed 10 points. These are included in the Annex to this decision notice.
8. Following an internal review the Planning Inspectorate wrote to the complainant on 9 January 2012. It repeated its advice that FOIA and EIR provide the right of access to recorded information held by public authorities.
9. Specifically with respect to the complainant's 10 points, it told him that it did not hold information in relation to points 3, 4, 7, 8, 9 or 10. It provided information in relation to point 2, and dealt with points 5 and 6 as new requests. With respect to point 1, the Planning Inspectorate advised that its letter of 13 December 2011 explained why that information was not supplied.

Scope of the case

10. The complainant contacted the Information Commissioner (the Commissioner) to complain about the way his request for information had been handled.

11. Following an attempt at informal resolution, the complainant confirmed that he wanted to pursue his complaint. He told the Commissioner:

"I do wish to proceed with the complaint as the Planning Inspectorate failed to provide the information required in terms of the statutory time limit and some of the information requested has never been supplied.

....The Planning Inspectorate failed to supply information requested in the stipulated statutory time. Whether they supplied or did not supply the information because it does not exist is immaterial as they simply did not supply it in the time limit required."

12. Accordingly the Information Commissioner considers the scope of his investigation to be whether, at the time of the request (15 November 2011), the Planning Inspectorate held information relevant to parts (3), (4), (7), (8), (9) and (10) of the request.
13. He has also considered the timeliness with which the Planning Inspectorate handled the complainant's request for information.

Reasons for decision

14. Section 1(1) of the FOIA creates a general right of access to information held by public authorities. It provides for any person making a request for information to be informed in writing by the public authority whether it holds the information of the description specified in the request, and, if that is the case, to have that information communicated to him. The time limit for complying with section 1(1), set out in section 10(1), is twenty working days.

15. The complainant told the Commissioner:

".....and the remainder of the information requested was not supplied at all because such information simply does not exist despite mention of it being made in the Appeal Decision.

..... More importantly where is the evidence, insufficient or otherwise referred to? This evidence has not been supplied because it simply does not exist."

16. The request in this case relates to an appeal decision against a refusal to grant outline planning permission. In correspondence with the Commissioner, the Planning Inspectorate explained that the planning appeal in this case was determined by the written representations appeal procedure. That procedure provides parties with the opportunity

to make written submissions to the Inspector, who then determines the appeal based on that evidence and from their observations at the site inspection.

17. In correspondence with the complainant, the Planning Inspectorate told him that Inspectors were entitled to reach their decisions and supporting conclusions using their professional judgement.

18. In response to the Commissioner's questions about points (9) and (10) of the request the Planning Inspectorate explained that it considered that those points:

"relate to the conclusions drawn by the Inspector in exercise of her professional planning judgement."

19. It also confirmed that it did not hold any further recorded information or explanation for the way the Inspector reached her decision.

20. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, he must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

21. Whilst appreciating the complainant's frustration in this matter, having considered the Planning Inspectorate's correspondence with the complainant and its submissions during the course of his investigation, the Commissioner is satisfied that, on the balance of probabilities and on the basis of the evidence in front of him, the Planning Inspectorate does not hold any relevant information.

22. In reaching this decision, he has taken into account the fact that FOIA, and for that matter EIR, gives the right to access recorded information held by public authorities at the time of the request. They do not require public authorities to answer questions, provide explanations or give opinions, unless this is recorded information that they hold. Nor do they require a public authority to create information or provide comment.

Section 10 Time for compliance

23. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days. Failure to respond within the time limit would be a breach of the FOIA.

24. In this case, the complainant first wrote to the Planning Inspectorate on 12 October 2011. The Planning Inspectorate, in its response of 21 October 2011 acknowledged:

"You have asked for details to be supplied to you with regard to the evidence submitted on parking levels. Under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 you are entitled to request copies of any document held by bodies across the public sector. I have enclosed the relevant leaflets for your assistance in making such a request".

25. It later advised that its purpose in explaining how it operates FOIA was to bring the process to the complainant's attention and to clarify exactly what information he was seeking.
26. Section 1(3) of FOIA provides that *"where a public authority reasonably requires further information in order to identify and locate the information requested"* and has informed the applicant, no further action is required until that additional information has been received.
27. In this case, the Commissioner considers the date of the request for information to be 15 November 2011. As the Planning Inspectorate responded on 13 December 2011, the twentieth day, he considers that the response was provided within the statutory timescale.

Right of appeal

28. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

The 10 points, as clarified in the complainant's correspondence of 21 December 2011 with the Planning Inspectorate, are as follows:

1. Why was the information, evidence and undertaking I require not supplied in terms of my letter of the 12 October as this appears to be in contravention of the Freedom of Information Act 2000?
2. I require to know the full remuneration paid to [named individual] in respect of her so called investigation of the Planning Appeal relating to [named development].
3. Why will [named individual] and the Planning Inspectorate not give a legal written undertaking that the occupiers of the twelve flats at [named development] will not own more than twelve motor vehicles? Failure to give such an undertaking is an admission of the nonsensical nature of the statement that twelve parking spaces is sufficient for twelve flats.
4. Where are the motor vehicles of visitors to the development including visiting relatives, friends and tradesmen to be parked?
5. Under what authority and legislation can an unelected functionary such as [named individual] over rule the conclusions and decision of the local electorate, the town council and the district council all of whom rejected such a planning application?
6. An explanation of why the local electorate, the town council and the district council go to all the time, effort and financial expenditure to investigate, discuss, hold meetings including public meetings on a planning application if a single unelected functionary acting on behalf of an unelected Government Department can overrule all of their deliberations and findings.
7. Why in the report of [named individual] is the development presented as being a one or two storey building when in fact it is a large, overbearing, four storey block of flats that will be visible from various vantage points in Berkhamsted including [...] and [...].
8. Why is there no mention of the pedestrian traffic comprising of large numbers of school children crossing over the entrance into [named development] and the risk and hazard this causes?
9. In para 11 of the Appeal Decision report it is stated that *'there is insufficient evidence ... would be likely to increase on-street parking to a level that would endanger the safety of highway users'*. I require that

the evidence to support this statement, insufficient or otherwise, be provided to me.

10. Also in para 11 the Appeal Decision report states '*the provision of one space (parking space) per two bedroom dwelling is reasonable*'. Whilst there may well be a totally illogical and unreasonable policy to this effect I require the actual facts and evidence to prove the statement.....