

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 6 October 2014

Public Authority: Allerdale Borough Council
Address: Allerdale House
New Bridge Road
Workington
Cumbria
CA14 3YJ

Decision (including any steps ordered)

1. The complainant has requested various information regarding specific properties in Maryport. The Commissioner's decision is that, on the balance of probabilities, Allerdale Borough Council does not hold any recorded information within the scope of his requests. He does not require the council to take any steps to ensure compliance with the legislation.

Background

2. Allerdale Borough Council ('the council') explained that the correspondence between it and the complainant has centred on a piece of land in Maryport which appears to have once had houses on it which were demolished some time ago. The land was left as an open area and was used for parking. The area was smartened up in 2002 as part of an improvement programme in the town which included resurfacing the area in question. This was carried out by Maryport Developments Limited. The complainant contacted the council as he alleged that a boundary wall, which he stated was in common with council land and his, was being damaged by activities carried out on council property.

Request and response

Request 1

3. On 25 September 2012, in a letter giving notice of damage caused to his property, the complainant asked the following questions:

"...why did ABC not build their own retaining wall to the boundary of their land, complete with an adequate soakaway drainage system?"

Could ABC also give a reasonable explanation as to what happened to the sewerage system that serviced those properties prior to demolition?

Also I wish to know whom, if anyone, gave consent for ABC to use my part owned boundary wall as a retaining wall?"

4. The council responded on 29 May 2013. It did not specifically respond to the above questions but instead explained that the development of the car park was in fact carried out by Maryport Development Limited as part of the pedestrianisation of Senhouse Street. It also confirmed that it does not own any land immediately adjacent to the complainant's property and therefore any claim should be against the adjoining land owner and not the council.
5. The complainant expressed his dissatisfaction with the response on 28 June 2013. The council responded on 11 July 2013 stating that the matters raised on 25 September 2012 have been thoroughly investigated and asking the complainant questions relating to his allegations that the council carried out demolition, back-filling and re-grading work.

Request 2

6. On 12 July 2013 the complainant, whilst responding to the questions asked by the council on 11 July 2013, made the following requests for information:

"And I request, under the Freedom of Information Act that Allerdale give me access to any information as to when they made a compulsory purchase on No's 61, 63, 65, and 67 Furnace Lane, Maryport, Cumbria CA15 6DQ.

As requested above, under the Freedom of Information Act I request the right to know if Allerdale, or any other local authority carried out a compulsory purchase on the above referenced properties

and also, if not carrying out demolition of same in house, then the name of contractor(s) responsible for doing so on the Council's behalf.

Actually, the landowner, together with the owner of [number redacted] Senhouse Street did have need to complain to the Council at that time. A fact that is referenced on Title Deeds to my property. And of course, Allerdale will know fully what the issues were at that time. With that in mind I request to see all documentation in Allerdale's possessions which refer to those concerns."

7. The council responded on 21 August 2034 stating that, having checked its records, it does not hold any recorded information.

Request 3

8. On 26 August 2013 the complainant made the following requests for information:

"Under the above referenced act I request information as to when and how Allerdale Borough Council and, or any previously known local Council(s) if now part of, or answerable too [sic] Allerdale Borough, acquired land now registered in Allerdale's name, which was previously known and registered as No's 61, 63, 65 & 67 Furnace Lane Maryport Cumbria. Referenced as: Title Number CU 36067.

I also seek further explanation/clarification as to why Allerdale Borough Council or any previously known local Council(s) if now part of, or answerable too [sic] Allerdale Borough Council appear not to have any record of a dispute with the owners of [numbers redacted] Senhouse Street with regard to a right of way across, and creation of a car park on your parcel of land, previously known and registered as No's 61, 63, 65 & 67 Furnace Lane Maryport Cumbria? It is my understanding that Allerdale Borough Council is fully aware of this right of way and therefore should also be aware of the dispute which took place at the time of the Council's development of the car park on Furnace Lane.

It is also my understanding that any land/property holder was/is liable for disclose any information with regard to any disputes etc. thereon when relinquishing possession of the same? Allerdale state that there is no such record of any dispute; yet my deeds quite clearly state, in a search carried out in 1988, that there was a dispute with the Council. Therefore, as the now land owner, I wish to be informed by Allerdale as to the nature of that dispute."

I also request information as to whom, or which organisation, or authority, applied for planning permission for the creation of the car park on this particular area of Furnace Lane and the timing of that application?"

9. On 4 September 2013, the council requested further details of the dispute (such as dates and what the specific issue was about) so that it could make further enquiries.
10. On 4 October 2013, the council provided its response. It said that, as the complainant was not able to give any further detail on the alleged dispute, its searches and investigations have not uncovered any further information to that which has already been provided in response to a previous request. It also said that it does not hold any record of any planning application for the site with regard to the conversion to a car park but this would be covered by the permitted development rights of the council.
11. The complainant requested an internal review of the responses to his requests on 6 November 2013. A number of emails were then exchanged between the council and the complainant before the council provided its internal review response on 17 April 2014. It confirmed it had undertaken appropriate searches and is not withholding information.
12. The request numbering above has been devised by the Commissioner for ease of reference during this investigation. It does not reflect any request numbers referred to by the complainant or the council

Scope of the case

13. The complainant wrote to the Commissioner on 17 June 2014 to complain about the way his requests for information had been handled.
14. The Commissioner has considered whether the council holds any information within the scope of the requests.

Reasons for decision

15. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
16. Regulation 5(1) of the EIR states that:

“Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.”
17. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant’s evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
18. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. The council explained that it has a number of files on this piece of land and that it checked all of those files and all files on related properties but the information contained in them is limited and does not answer the complainant’s questions. It said that it is possible that any associated documentation was destroyed when it registered title with the Land Registry in 1997. It said it holds no reference as to what was destroyed.
19. The council provided the Commissioner with its explanations as to why the information is not held.
20. In relation to request 1, it said that the letter containing the requests was received by its legal team and given that it was entitled “Notice” was considered as a notice of potential action against the council. Therefore the council concentrated on investigating the complaint – namely the alleged condition of a boundary wall which the complainant

claimed bordered his, and its properties. During the investigation it was discovered that the two properties in question did not back onto each other, and the council provided the Commissioner with maps to demonstrate this, which is why its response stated that "the Council does not own any land immediately adjacent to your property." It confirmed to the Commissioner that the information it holds on this piece of land does not include any information on soakaway and sewerage systems.

21. In relation to request 2, the council explained that from the information it holds the only thing it can confirm with any certainty is that it owns the title to this piece of land and provided the Commissioner with a copy of the title for the land showing the date of registration as 1 December 1997. It said that it does not hold any information on when, or how, the land in question was acquired, nor when any properties were demolished. It said that it is possible that both events were completed before or around the time of the founding of the council in 1974. It also confirmed that it does not hold any information on any complaint and that there is no reference to any complaint in its title on the land.
22. In relation to request 3, the council again confirmed that it has no record as to how or when the piece of land in question was acquired. It again said that with the information it holds it cannot find any reference to any dispute, and there is no mention of it in the title document, and said that it asked the complainant to provide more detail on the dispute he states is mentioned in his deeds to see if further information would help it in its searches but the complainant declined to provide any further details. With regard to the planning application, it said that it could not find any reference to a planning application being made for this piece of land registered on the planning register but said that this could be explained as it would be covered by the permitted development rights enjoyed by the council which would not require a planning application to be made.
23. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council did not specifically address this question but did say that it is likely that any associated documentation (if held) was destroyed in 1997 as it was deemed no longer required.
24. The Commissioner also considered whether the council had any reason or motive to conceal the requested information. It appears that the complainant requires the requested information in order to make a claim for damage to his property. The Commissioner has not seen any evidence that the council is withholding the information because of this

potential claim. Therefore he has not identified any reason or motive to conceal the requested information.

25. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any information relevant to this request. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA, or where the information is likely to be environmental, any evidence of a breach of regulation 5(1) of the EIR.

Right of appeal

26. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

27. 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.
28. 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
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