

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 November 2017

Public Authority: The Planning Inspectorate
Address: 4/B Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Decision (including any steps ordered)

1. The complainant has requested from The Planning Inspectorate (PI) the Inspector's notes for 4 appeals determined by a specific inspector, including the notes that were taken in relation to her application for planning permission. The PI provided information falling within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the PI does not hold information further to that already provided.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 19 April 2017, the complainant wrote to the PI and requested information in the following terms:

"Please may I have a copy of the inspector's notes for the following cases:

APP/P0240/W/16/3146576

APP/P1560/W/15/3133238

APP/J1915/W/16/3144208

APP/K0235/W/16/3145924"

5. On 4 May 2017, the PI, upon contacting the responsible inspector, provided to the complainant copies of the site visit notes for each of the 4 appeals.
6. On 5 May 2017, the complainant asked whether the notes were the complete record for each of the appeals. In the absence of a response, she contacted the PI again on 13 June 2017, stating that she witnessed the inspector filling in two sheets at the complainant's site visit.
7. Subsequently, the PI contacted the inspector once again and found that the inspector also took notes on the site plans for the above-mentioned four appeals. Consequently a further disclosure was made on 15 June 2017 providing the annotated site plans to the complainant.
8. Remaining dissatisfied with the amount of information received, the complainant requested an internal review from the PI stating:

'Are you suggesting that the inspector made no other notes in the preparation of the appeal decision? And this applied in all his cases?

As the inspector works on 4 cases a week, it is not conceivable that no notes are made. Please review your answer.'

9. On 21 June 2017 the PI provided the outcome of its internal review:

*'Having again checked with the Inspector I can confirm that **he did not** (PI's emphasis) make any other notes on any of the 4 appeals that formed your Freedom of Information request. The only notes made throughout the appeals are those taken at the site visits and which have already been provided to you.'*

Scope of the case

10. The complainant contacted the Commissioner on 25 June 2017 to complain about the way her request for information had been handled.
11. In the complaint letter, the complainant expressed her doubts that the PI must hold information further to that provided.
12. The Commissioner has considered whether the PI has identified and provided all of the requested information it holds.

Reasons for decision

Appropriate legislation

13. Regulation 2¹ of the EIR sets out the definition of environmental information. As the request is for information relating to specified planning applications, the Commissioner considers that the requested information falls squarely within the definition of environmental information at regulation 2(c).

Regulation 5(1): Duty to make information available on request

14. Regulation 5(1) of the EIR states:

"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."

15. In scenarios where there is some dispute about the amount of information located 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 Information Tribunal decisions, applies the civil standard of the balance of probabilities.
16. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities, a public authority holds any further information which falls within the scope of the request (or was held at the time of the request).
17. The complainant claims that the information she has received is not representative of the extensive notes taken by the inspector in the course of the site visit.

The PI's position

18. The Commissioner wrote to the PI requesting a submission in respect of a number of questions relating to the allegations raised by the complainant. The questions were focused on the nature of the notes that the PI's inspectors take on site visits; the purpose of those notes; whether the PI has contacted the relevant inspector with regards to the requested information; the retention policy of the PI and the current status of the requested information. In addition, the Commissioner requested from the PI a copy of the information that had been shared with the complainant.

¹ <http://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made>

19. The PI responded to the Commissioner's letter by providing a copy of the requested information that included the Inspector's notes on a form and on a site plan for each site visit. The PI also provided a chronological description regarding the case of the complainant, in order to provide context for its answers to each of the questions that the Commissioner has asked in her letter.
20. From the answers provided, the Commissioner understands that the PI inspectors enjoy discretion on the form and content of the notes they take, the amount of notes that they take and how they use them in rendering the final decision in the appeal procedure. The PI does not prescribe a specific form of notes, nor does it specify what information the notes must capture. However the PI asks its inspectors to retain their notes in case they may prove helpful in the event of a legal challenge.
21. The PI confirmed that for the purposes of dealing with the request, the inspector was contacted and asked to provide the information that was in his possession. The PI supported their position by providing a copy of correspondence with the relevant inspector.
22. With regard to the retention policy, the PI informed the Commissioner that inspection site visit notes are retained by the relevant inspector for 3 months following the issue of the appeal decision in case they prove of use in the event that a legal challenge is made. With reference to the record of appeal documents, the PI's policy is to retain the received representation for one year and to retain appeal decisions for five years.
23. In relation to the complainant's assertions that the inspector must have taken more notes than those provided to her, because the inspector training manual requires them to do so, the Commissioner contacted the PI again and asked it to respond to these arguments. In its response the PI explained that the aim of this document is to provide advice to inspectors to assist them in their task, but it does not constitute a Government policy or guidance. As such, it does not create any obligation on inspectors with respect to taking notes.

The complainant's position

24. On 10 October 2017, the Commissioner wrote to the complainant explaining the preliminary conclusions drawn from the responses received from the PI and invited the complainant to submit any further evidence or argument which would contradict the Commissioner's findings.
25. The complainant provided her final arguments by referring to relevant parts of a document published by the PI under the title Inspector

Training Manual (ITM), respectively its parts dealing with how inspectors work, Annexe 7 – related to the preparations required for producing robust appeal decisions; Annexe 8 – related to the duties of group managers in respect of oversight of inspectors under their responsibility, and specific parts of the document dealing with handling challenges within the Planning Inspectorate (PINS) High Court Section.

26. In the complainant's view, if the responsible inspector had followed the practical advice provided in the above-mentioned document, he must have taken more notes than already provided by the PI.

The Commissioner's view

27. The Commissioner has reviewed the copies of the requested documents that the PI has provided to the complainant and the correspondence that the PI had in the course of handling the complainant's request.
28. It appears from the response of the PI that the inspectors enjoy wide discretion in relation to the notes that they take when they prepare their appeal decisions. The PI does not oblige the inspectors to use a specific form of note taking, or about the amount of notes that they should take in specific cases. Instead the PI leaves it to the relevant inspectors to assess the amount and the form of notes that they find appropriate for reaching adequate conclusions in their cases.
29. It is understood from the PI's answer that its retention policy requires inspectors to retain the site visit notes for a period of three months. Notwithstanding this fact, the PI managed to receive the requested notes from the inspector and provide them to the complainant, even though the information request from the complainant was submitted beyond the deadline for retention. Namely, for APP/P0240/W/16/3146576, nine months after the decision on appeal was rendered; for APP/P1560/W/15/3133238, 1 year and 2 months after the decision on appeal was rendered; for APP/J1915/W/16/3144208, 9 months after the decision on appeal was rendered; and for APP/K0235/W/16/3145924, more than one year after the decision on appeal was rendered.
30. In light of this, the Commissioner notes that the PI was able to provide information that would not normally have been held.
31. Furthermore, the Commissioner examined carefully the manual and concluded that the document is a training manual used by trainee inspectors and does not constitute a policy. This is made clear in the introduction to the ITM. Consequently, it does not confer any mandatory requirements on the qualified inspectors in respect of taking notes when preparing appeal decisions.

32. The Commissioner has considered the searches performed by the PI, the amount of information provided, the PI's explanations as to why there is no further information held and the complainant's concerns.

On the balance of probabilities, the Commissioner considers that the PI does not hold any further information to that already provided.

Right of appeal

33. 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

34. 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.
35. 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

Alun Johnson
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