

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 June 2021

Public Authority: North East Lincolnshire Borough Council
Address: Municipal Offices
Town Hall Square
Grimsby
North East Lincolnshire
DN31 1HU

Decision (including any steps ordered)

1. The complainant requested information with regards to flooding at a local park. North East Lincolnshire Borough Council (the council) responded that the information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the information is not held. But she did find that the council breached regulations 14(2) and 14(3)(a) in not issuing a valid refusal notice in accordance with the EIR.
3. As the Commissioner has found the information is not held, she does not require any steps.

Request and response

4. On 18 October 2020 the complainant made the following information request:

"Risk assessments for Ainsley park water logged area.

Please provide the last six years documents.

Please include the most recent risk assessment In the last few months since the water has been drained from the park.

Please provide documentation of all correspondence with Anglian water. Regarding the issues over drainage, your complaints team told me that Anglian water wouldn't give NELINCS council permission to use their drains/sewers to pump the water out of the flooded area of the park. I'd like to see a copy of this please.

5. The council responded on the 17 November 2020 stating that the information was not held.
6. The complainant requested an internal review on the 17 November 2020. The council provided its internal review outcome on the 10 December 2020 upholding its initial response.

Scope of the case

7. The complainant contacted the Commissioner on 17 December 2020 disputing the council's position that the information requested was not held.
8. During the Commissioner's investigations, although the council maintained that they held no information falling within the scope of the request, they did provide the complainant with inspection reports and a diagram, for transparency, as they did make reference to flooding.
9. The complainant still disputes that the council does not hold the information he has requested.
10. The scope of the following analysis is to determine if the council holds any information falling within the scope of the request.

Reasons for decision

Is the requested information Environmental Information?

11. The Commissioner has first considered whether the requested information, if held, would constitute environmental information as defined by regulation 2(1) of the EIR. Regulation 2(a), (c) and (f) would be relevant in this case. The information requested is with regards to risk assessments on flooding in a local park and correspondence with a water company on drainage.
12. This type of information, if held, would be in connection with the state of the elements of the environment and measures affecting, or likely to affect those elements. And the risk assessments, if held, may likely include consideration to the state of human health and safety.

Regulation 12(4)(a) of the EIR - Information not held

13. Regulation 5(1) of the EIR requires that:

"... a public authority that holds environmental information shall make it available on request."

14. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.

15. 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 must decide whether, on the civil standard of 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).

16. The Commissioner has therefore asked the council to explain the searches it has carried out in determining that no information is held.

17. The Council has told the Commissioner that risk assessments were not carried out for the water logged area at Ainslie Park and that it has no legal requirement to do so. It has also confirmed that searches were made for the requested correspondence with Anglian Water.

18. It has confirmed that before responding to the request, checks were made with the following service areas as they are the most likely places that the information would be created and held:

- Drainage and Coastal Defence: Drainage and Coastal Defence Team Manager
- Environment – Bereavement, Grounds, maintenance, Ecology and Resort: Strategic Lead, Environment – Bereavement, Grounds Maintenance, Ecology and Resort (Beach Safety & Tourist Information) and the Area Operations manager
- Health, Safety and Wellbeing Team:- Occupational Health and Safety Manager
- Highway and Transport: Highway Asset Team Manager and the Principal Transport Officer
- Legal Services: Specialist Lawyer Property.

19. It has stated that these services and officers checked their electronic processing systems, network folders and physical records (although no physical records were found).
20. The council has advised the Commissioner that if information were held, it would be held in electronic form and it searched the following key words: Ainslie Park, Ainslie Park Footpath and Ainslie street – explaining that any records or information identified from that search was then reviewed to try to locate any information relevant to the scope of the request.
21. The council has told the Commissioner that Ainslie Park is not known locally by any other names, so searches using the keyword 'Ainslie' would identify all information held in relation to the park.
22. As stated previously, searches did reveal some inspections of the park which, as previously mentioned in this decision notice, were provided to the complainant, during the Commissioner's investigations.
23. Even though these inspections fall outside of the scope of the request – they are not "risk assessments" – they were provided to the complainant by the council for transparency.
24. The Commissioner has viewed these inspections and agrees that they are not "risk assessments".
25. With regards to correspondence with Anglian Water, the Commissioner raised with the council that the complainant has told her that the council's complaints team told him *"...that Anglian water wouldn't give NELINCS council permission to use their drains/sewers to pump the water out of the flooded area of the park"* and he therefore considers this shows there is correspondence on the requested matter.
26. The council provided the Commissioner with a copy of the response it had sent to the complaint on 22 September 2020 which includes the following statement:

"...The Council has consulted with Anglian water in the past around options to pump the water, but no permitted location has been identified where the water could be pumped to. The water authority will not permit flooding water to be pumped into the sewage system..."
27. The Commissioner notes that the above statement says the council consulted with Anglian Water in the "past", with no specific reference to when that was.

28. The complainant's request was for information within the last 6 years and the council has advised the Commissioner that its Drainage and Coastal Defence Team Manager has confirmed that he has not undertaken and is not aware of any consultation with Anglian Water, specific to the Ainslie Street area in the last 7 years and its searches have not revealed any correspondence.
29. If no consultations have taken place within the last 7 years, then this offers a plausible reason, to the Commissioner, why the council should not be expected to hold correspondence within the scope of the request.
30. The complainant also strongly questions the council's position that no flood risk assessments are held on a flooded park where children play and a man drowned.
31. The Commissioner points out that it is not in her remit to determine whether this information *should* be recorded by the council, she can only determine whether it is held or not.
32. The council hold the view that it is not legally required to have these risk assessments. If its position is that it does not require them, then it is difficult for the Commissioner to see why the council would go on to create something it does not consider it requires.
33. The Commissioner, on review of the above, is satisfied that the council has carried out relevant searches within the most likely areas that information relevant to the request would be held.
34. If a risk assessment had been carried out, the Commissioner accepts that it is reasonable to expect that the searches carried out by the Council would have located this information. However, its searches have not found this information.
35. On the basis that there is no evidence to show that the council holds information falling within the scope of the request, the Council's statement that it is not required to hold this information, and based on the searches carried out by the council, the Commissioner finds on the balance of probabilities that the requested information is not held.

Regulation 14 of the EIR - Issuing a valid refusal notice

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

"If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulations.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of the receipt of the request.

(3) The refusal shall specify the reasons not to disclose the information requested, including-

(a) any exception relied on under regulations 12(4), 12(5) or 13..."

37. In this case, as the council does not hold the requested information it should have issued a refusal notice citing regulation 12(4)(a) of the EIR, but failed to do so.
38. In addition, it took 22 working days to respond to the complainant's request – this being outside the required 20 working days timeframe to respond.
39. The Commissioner therefore finds that the council breached regulations 14(2) and 14(3)(a) of the EIR.
40. As the Commissioner has since found that the information is not held, she does not require any steps but asks that the council takes note of its obligations for issuing refusal notices under the EIR.

Right of appeal

41. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

42. 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.
43. 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

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