

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 14 January 2022

Public Authority: Peabody Trust
Address: 45 Westminster Bridge Road
London
SE1 7JB

Decision (including any steps ordered)

1. The complainant requested information relating to compulsory purchase orders. Peabody Trust refused to provide the information as it said it was not a public authority and hence not subject to the EIR.
2. The Commissioner's decision is that Peabody Trust is not a public authority for the purposes of the EIR and was therefore not obliged to respond to the request.
3. As Peabody Trust is not a public authority the Commissioner would be unable to require any remedial steps.

Request and response

4. On 17 September 2021, the complainant wrote to Peabody Trust and requested information in the following terms:

"Please provide information about the reasons for deductions from compensation paid to Clays Lane residents forcibly removed under the London 2012 Olympics Compulsory Purchase Order."
5. Peabody Trust responded on 11 November 2021. It stated that it was not subject to the EIR, was not certain that it held any relevant information anyway and that the burden of establishing whether it did still hold the information would be significant.

6. Further exchanges of correspondence followed up until 30 November 2021. Peabody Trust maintained its stance that it was not subject to the EIR.

Scope of the case

7. The complainant contacted the Commissioner on 4 January 2022 to complain about the way his request for information had been handled.
8. The Commissioner responded to the complaint on 6 January 2022. He did not consider that Peabody Trust was a public authority and therefore would be unable to resolve the complaint satisfactorily.
9. The complainant responded on 11 January 2022. He remained adamant that Peabody Trust was a public authority and requested a decision notice on the matter.
10. The Upper Tribunal in *Fish Legal & Emily Shirley v Information Commissioner & others* [2015] UKUT 52 (AAC) ruled that the Commissioner does have the power, under the EIR, to issue a decision notice that determines whether a particular body is or is not a public authority.

Reasons for decision

Would the requested information be environmental?

11. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
 - (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors*

referred to in (a)...as well as measures or activities designed to protect those elements;

- (d) reports on the implementation of environmental legislation;*
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
12. In *DBEIS v Information Commissioner and Henney* [2017] EWCA Civ 844, the Court of Appeal ruled that the first step in determining whether information was or was not environmental was to determine what "measure" the information was "on." If the information was "on" a measure that would have an environmental impact, it would be environmental information. When determining what the measure in question was, the Court of Appeal held that this should be interpreted in accordance with the principles of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.
 13. The information in question is financial information immediately concerned with the administration of Compulsory Purchase Orders (CPOs). However the Court of Appeal in *Henney* noted that the test for environmental information goes beyond what the information is "specifically, directly or immediately about."
 14. The CPOs in question were part of a larger scheme to develop a sports park for the purpose of hosting the 2012 Olympic and Paralympic Games. That broader scheme had an environmental impact and would be a "measure" affecting the elements of the environment.
 15. A CPO requires a person or organisation to hand over ownership of their property to a public authority for a sum that is calculated according to legislation. Public authorities can issue CPOs where there is a compelling need to do so in order to serve the public interest – usually because the public authority in question wishes to develop the particular land being compulsorily purchased. Whilst the recipient of a CPO has a right of appeal, they cannot lawfully defy the Order and can, ultimately, be forcibly removed from the property in question.

16. The Commissioner considers that the CPOs formed a key part of the overall development of the Olympic park – because they allowed the Olympic Delivery Authority to ensure that it owned all the land necessary for the construction of the park. Without CPOs, the project is unlikely to have been feasible.
17. As such, the Commissioner considers that the requested information would be information on a measure affecting the elements of the environment. Therefore the request falls to be dealt with under the EIR.

Is Peabody Trust a public authority for the purposes of the EIR?

18. Regulation 2(2) of the EIR sets out the categories of organisations that will qualify as public authorities for the purposes of the Regulations.

- (a) *government departments;*
- (b) *any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding—*
 - (i) *any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or*
 - (ii) *any person designated by Order under section 5 of the Act;*
- (c) *any other body or other person, that carries out functions of public administration; or*
- (d) *any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and—*
 - (i) *has public responsibilities relating to the environment;*
 - (ii) *exercises functions of a public nature relating to the environment; or*
 - (iii) *provides public services relating to the environment.*

19. Peabody Trust is not a government department and it is not listed in Schedule 1 of the FOIA. The organisation is an independent body registered under the Co-operative and Community Benefit Societies Act 2014. It is not under the control of any public authority. Even if it was, as the complainant suggests, previously under a contract with a public authority, that does not amount to Peabody Trust being “under the control of” another person – either then or now. Therefore Peabody

Trust does not fit any of the criteria of Regulations 2(2)(a), 2(2)(b) of 2(2)(d) of the EIR.

20. The complainant argued that, because Peabody Trust was acting under a contract with the Olympic Delivery Authority when it had involvement with the CPOs, it therefore exercises functions of a public nature. This is incorrect.
21. In *Information Commissioner v Poplar Housing, Regeneration & Community Association* [2020] UKUT 182 (AAC), the Upper Tribunal set out a two tests that an organisation must meet in order to qualify as a public authority under Regulation 2(2)(c). Firstly, the functions must have been entrusted under law and secondly, the organisation must have been granted "special powers", not available to private organisations, in order to carry out its functions.
22. Whatever contractual arrangements Peabody Trust had at the time of the CPOs, those arrangements have long since been overtaken by events and do not reflect the situation today. Peabody Trust pointed out in its responses to the complainant that the CPOs were in fact served by the Olympic Delivery Authority, not Peabody Trust. The fact that Peabody Trust cannot serve its own CPOs would suggest that it does not have any "special powers" to perform its functions – meaning that it would be unable to satisfy the second test to qualify as a public authority as set out in *Poplar HARCA*. Nor can a public authority transfer its own obligations under EIR to another organisation. Just because an organisation holds information on behalf of a public authority it does not follow that it must itself be a public authority too.
23. Even if Peabody Trust still held information on behalf of the Olympic Delivery Authority, the route of access would have been to make a request to that body whilst it was still in existence.
24. The Commissioner is satisfied that Peabody Trust does not meet the requisite criteria to be classed as a public authority for the purposes of the EIR and is therefore not obliged to comply with requests made under that legislation.

Right of appeal

25. 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

26. 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.
27. 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

Roger Cawthorne
Senior Case Officer
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SK9 5AF