

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 September 2023

Public Authority: Department for Levelling Up, Housing & Communities

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to planning matters involving Torridge District Council. The Department for Levelling Up, Housing & Communities (DLUHC) confirmed that it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, DLUHC correctly confirmed that it did not hold the requested information and that, therefore, regulation 12(4)(a) applies.
3. The Commissioner does not require DLUHC to take any steps.

Request and response

4. On 10 May 2023 the complainant submitted the following request to the Department for Levelling Up, Housing & Communities (DLUHC):

"I have previously emailed the Department concerning an Article 4 Direction at Torridge Council. I received the attached response which does not answer my enquiry. Please could you send me all correspondence from Torridge DC to the Secretary of State and the response regarding this Article 4 Direction."

5. On 5 June 2023 DLUHC responded and confirmed that it did not hold the requested information.
6. On 13 June 2023 the complainant asked DLUHC to carry out an internal review.
7. On 4 July 2023 DLUHC sent the outcome of its internal review. This advised that it was upholding the previous response in full, i.e., that the internal review officer believed that the original response was correct and that the requested information was not held.

Scope of the case

8. On 4 July 2023 the complainant contacted the Commissioner to complain about DLUHC's handling of their request.
9. DLUHC advised the complainant in its initial response and in its internal review that, whilst it did not hold relevant correspondence directly from and to the Secretary of State, correspondence involving other officials delegated to handle such matters might be held. It suggested to the complainant that they may wish to submit a broader request which took account of this.
10. During his investigation the Commissioner was advised that the complainant had subsequently submitted a more broadly defined request to DLUHC. This request was under consideration by DLUHC at the time of the Commissioner's investigation.
11. As the complainant's expanded request would cover information falling within the scope of the original request, the Commissioner suggested to the complainant that they may wish to withdraw their complaint as it appeared that the new request superseded the original request and it could potentially resolve their concerns.

12. The complainant declined to do this and confirmed that, according to their understanding of the relevant planning legislation, they considered that there should be official correspondence from the Secretary of State in person, not from other officers at the DLUHC.
13. The Commissioner has considered whether DLUHC correctly confirmed that it did not hold the requested information.

Reasons for decision

Regulation 12(4)(a) – duty to provide environmental information

14. Regulation 12(4)(a) of the EIR provides that a public authority may refuse to comply with a request for information to the extent that it does not hold that information when it receives the request.
15. In this case DLUHC confirmed that the requested information was not held. The complainant disputes this.
16. In scenarios where there is some dispute between a complainant and a public authority regarding the extent to which relevant information is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities
17. In order to establish where the balance of probabilities lies the Commissioner approach DLUHC with a range of questions. The questions (in bold) and summaries of DLUHC's responses are set out below.

What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?

18. DLUHC confirmed that its correspondence system was checked, as was the Secretary of State's email account and no correspondence was located. It explained that letters from external parties into the Department are all logged as standard on the Department's correspondence system and that any official response from the Secretary of State would have an entry logged on this system.

Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

19. DLUHC confirmed that the Secretary of State's private office were asked to make searches of any relevant areas in which correspondence might be found. It confirmed that no information was located by them after this search. DLUHC further confirmed that the Planning Casework Unit

were also asked to make searches and this did not retrieve this specific information.

Is there a business purpose for which the requested information should be held? If so what is this purpose?

20. DLUHC stated that there was no business need for retaining the information. It explained that, if the Secretary of State's Private Office had received a letter direct from Torrington District Council in relation to an Article 4 direction they would have forwarded it to the Planning Casework Unit for their action. In short, it would not be retained within Private Office.
21. DLUHC explained that if the Planning Casework Unit were actioning anything sent from the Secretary of State's Private Office they would hold the record within their planning casework file. Planning casework files are retained for 10 years following the last action on the file.

Are there any statutory requirements upon DLUHC to retain the requested information?

22. DLUHC confirmed that there is no statutory requirement for Private Office to hold the information.
23. DLUHC explained that an article 4 direction is made by the local planning authority. It restricts the scope of permitted development rights either in relation to a particular area or site, or a particular type of development anywhere in the authority's area. DLUHC confirmed that, where an article 4 direction is in effect, a planning application may be required for development that would otherwise have been permitted development. Article 4 directions are used to control works that could threaten the character of an area of acknowledged importance, such as a conservation area.
24. DLUHC explained that The Town and Country Planning (General Permitted Development) (England) Order 2015 makes no mention of retaining this information, however, if a record were held it would be located within its correspondence system, within Private Office or within the Planning Casework Unit.

Is there information held that is similar to that requested and has DLUHC given appropriate advice and assistance to the applicant in line with the duty contained at regulation 9 of EIR?

25. DLUHC confirmed that it suggested to the applicant in its original response that officials within the Department might have had correspondence with Torrington District Council.

26. DLUHC confirmed that the complainant subsequently contacted it in this regard and confirmed that it was currently processing a request with this information as the scope of the request.

Conclusions

27. Having considered DLUHC's submissions, including its explanation of the role of the Secretary of State in such matters and the searches carried out for relevant information, the Commissioner is satisfied that, on the balance of probabilities, DLUHC correctly confirmed that the information is not held.
28. When considering the public interest test, the Commissioner can only find that the public interest in maintaining the exception at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because the information is not held.
29. The Commissioner is therefore satisfied that regulation 12(4)(a) applies and he does not require DLUHC to take any further steps in this case.

Right of appeal

30. 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

31. 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.
32. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF