

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

Date: 25 March 2021

Public Authority: South Lakeland District Council

Address: South Lakeland House
Lowther Street
Kendal LA9 4UF

Decision (including any steps ordered)

1. The complainant has requested information relating to a stove and flue installation at a specified property address. South Lakeland District Council (the Council) [PA1] has provided her with some information in response to her request, however it has stated that it does not hold the remaining requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information within the scope of the complainant's request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 3 November 2019, the complainant wrote to the Council and requested information in the following terms:

"New multi-fuel flue and stove installation at [specified address].

- Has SLDC been informed of the new installation of a stove and flue at [specified address].
- Was the installation of the stove and flue carried out by a HETAS engineer?
- Did the installer issue a HETAS certificate of compliance?
- Have SLDC received a HETAS certificate of compliance in respect of this new installation of stove and flue?
- Have the Building Control department of SLDC inspected and approved the new stove and flue installation?
- Have the Building Control department at SLDC issued a Building Notice in respect of the new stove and flue installation at [specified address]?

5. The Council responded to the complainant's request on 22 January 2020. It provided her with information in response to questions 1, 2, 4, 5 and 6 of her request and stated that it did not hold any information in response to part 3.

6. The complainant sought an internal review of the Council's response on 11 March 2020. In that letter, she also made an additional request for information, i.e:-

"Has the new flue and stove installation been signed off by the Building Control department of SLDC?"

7. The Council provided its internal review response on 24 April 2020. It apologised for the initial delay in responding to the complainant's request, and reiterated that it did not hold information in respect of part 3 of the complainant's request. It also responded to the complainant's additional request for information.

Scope of the case

8. The complainant contacted the Commissioner on 6 May 2020 to complain about the way her request for information had been handled.
9. The Commissioner has considered whether the Council holds the information requested.

Reasons for decision

Regulation 5 of the EIR

10. 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.”

11. 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 arguments. She 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. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
12. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
13. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the Council and other information or explanations offered by the Council which is relevant to her determination.
14. The Commissioner is sympathetic to the purpose of the complainant's requests, being for more explicit details of decision making by the Council in regard to an issue that is of great concern to her. It is possible that there are gaps in the documentation of decisions in this

respect. However, it is not within the Commissioner's remit to investigate whether, or how, decisions should have been documented, or if due process was followed in making them, but rather to uphold the right of access to information that is recorded.

15. In responding to the Commissioner's questions, the Council states that it holds no further information within the scope of the complainant's request other than that which it has already provided to the complainant. It informed the Commissioner that it had been advised of the new installation, which was carried out by a HETAS engineer. The Council stated that it does not hold information as to whether the installer issued a HETAS Certificate of Compliance and that it has not received a HETAS Certificate in respect of this new installation of stove and flue. No recorded information relating to the request has been concealed by the Council, it simply does not hold the information requested as to point 3 of the complainant's request.
16. The Council had stated to the complainant in its response and internal review that it did not hold copies of any HETAS Certificate of Compliance issued, as it was not a requirement for the Council to do so. It confirmed that it had been notified of the installation which had been carried out by a certified HETAS installer. It further stated in its internal review that Building Control could not get involved as no Building Regulation application had been required. It informed the complainant that any issues needed to be directed to HETAS or to Trading Standards at Cumbria County Council, as it was not within the remit of the Council.
17. The Commissioner understands that an underlying purpose of the requests from the complainant's perspective is to ensure that issues are carefully considered by the Council and that matters such as installations in properties are given appropriate consideration and proper processes are followed, e.g. within Building Control.
18. The Commissioner has found no evidence that information exists that is being withheld. The Council has explained to the Commissioner that it is not required to hold copies of HETAS Certificates of Compliance. It has explained to the complainant that this was not a Building Control matter, and pointed her in the direction of Trading Standards at Cumbria County Council if she was dissatisfied with the stove and flue installation. Having considered the Council's responses, and in the absence of any evidence to the contrary, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any further information within the scope of the requests.
19. The Commissioner therefore considers that the Council complied with its obligations under regulation 5 of the EIR.

Right of appeal

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

21. 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.
22. 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

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