

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

Decision notice

Date: 17 December 2013

Public Authority: House of Lords

Address: London
SW1A 0PW

Decision (including any steps ordered)

1. The complainant requested information about the lightning protection system at the House of Lords (the 'HOL'). Although the HOL provided some information in response to the request, it stated that it did not hold any lightning risk assessment report.
2. The Information Commissioner finds that the information requested constitutes environmental information and therefore should have been considered under the Environmental Information Regulations 2004 (EIR). He has concluded on the balance of probabilities that the requested lightning risk assessment report was not held by the HOL. In making available the information it held within 20 working days of receipt of the request, and in stating that no further information was held, the HOL therefore complied with regulations 5(1) and 5(2) of the EIR. The Commissioner does not require the Council to take any steps.

Request and response

3. On 22 June 2013 the complainant wrote to the HOL and requested information in the following terms:

"Under the protection of the FOIA 2000 please provide me with the following information for the Houses of Lords.

- 1. Lightning Test Results for the last 5 years*
- 2. As Built Drawings for the current Lightning Protection System.*
- 3. Lightning Risk Assessment report."*

4. The HOL responded on 17 July 2013. It provided information in respect of all three parts of the complainant's request, with redactions for personal information under section 40(2).

5. Later that day the complainant wrote to the HOL stating:

"...unfortunately you have not included the Lightning Risk Assessment (LRA) as per my original requests. You have indeed included the LRA for the Contractor to undertake the Lightning Test Procedures...but it is NOT the document which I required/requested via my original FOIA request.

I would also be very grateful if you could pass this email onto the Service Manager, whose remit covers the Lightning Protection because the Lightning Test Certificate confirms the House of Lords Lightning Protection System does NOT conform to the BS EN62305 standards??!! It is most disconcerting to learn the House of Lords and in all probability the House of Commons are non/complaint [sic] to BS/EN 62305/2008."

6. The HOL responded on 30 July 2013 advising that further enquiries had been made with its Parliamentary Estates Directorate, responsible for building related matters, which had confirmed:

"There is no specific risk assessment for lightning. The Houses of Parliament comply with all relevant legislation and where reasonably practicable industry best practices with regards maintenance of systems. The House of Lords therefore holds no further information relevant to your request."

7. It explained that the lightning protection system at the Palace of Westminster is carried out in accordance with the relevant legislation

which is the Electricity at Work Regulations 1989, and that BS EN 63205 was first introduced in 2006 as:

"guidance for standards of Lightning Protection installation in new buildings. It is not a legal requirement to conform with BS EN 62305 nor will it be for older buildings because of the inherent difficulties involved in fitting retro fitting systems that will meet these new standards".

8. The HOL confirmed that the certificates state non-compliance with the new standard as a *"matter of course"*.
9. That same day the complainant requested an internal review. The HOL wrote to the complainant on 1 August 2013. The HOL reconfirmed that it did not hold this information and that all information relating to this issue had been provided. It reiterated the points set out above, adding that in order to ensure that its lightning system is compliant with the Electricity at Work Regulations:

"The Parliamentary Estates Directorate thus commissions independent specialist reports regarding the condition of all installed systems on an annual basis with any defect work and/or suggested improvement being carried out as soon as practicable".

Scope of the case

10. The complainant contacted the Commissioner on 30 July 2013 to complain about the way his request for information had been handled.
11. As the complaint centres on part 3 of the complainant's request, the Commissioner has only investigated this aspect of the request.
12. The Commissioner has considered whether, on the balance of probabilities, the HOL held a lightning risk assessment report at the time of the request which it had not disclosed. The Commissioner has also considered whether the requested information was environmental and therefore which regime applies to the request.

Reasons for decision

Regulation 2 - Is the information environmental?

13. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in

regulation 2(1). Environmental information is defined within regulation 2(1) of the EIR as follows:

"any information in written, visual, aural, electronic or any other material form on –

(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...

(b) factors, such as substances, energy, noise, radiation or waste, emissions...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...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human health and safety, 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)".

14. The information falling within the scope of request (3) is the lightning risk assessment report for the HOL. The Commissioner's view is that this information is environmental under regulation 2(1)(f); it is "on" how a built structure may be affected by air and atmosphere, which are elements of the environment referred to in 2(1)(a).
15. The HOL confirmed it had not considered in detail which regime applied because it did not hold any recorded information on which to form a view and as the outcome would have been the same regardless of the regime (on this point it referred to Information Commissioner v Devon CC and Dransfield [2012] UKUT (AAC), para 77).
16. The Commissioner has concluded that the correct regime under which to handle the request was the EIR and the remainder of this analysis covers whether the request was handled in accordance with the EIR.

Regulation 5(1) – What recorded information was held?

17. Regulation 5(1) provides a general right of access to environmental information held by public authorities. 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. He will also consider the actions taken by the public authority to locate information falling within the scope of the request, and its explanations as to why the information is not held. The Commissioner is not expected to prove categorically whether additional information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"¹.

18. The Commissioner asked the complainant to explain why he believes that the HOL must hold more information than had been disclosed. In response the complainant said:

"HOL should have a Lightning Risk Assessment because they have a legal requirement to do so. The HOL claim they are legally complainant to the BS/EN 62305/2008 hence they do hold or should hold the sought after data."

19. The Commissioner's remit is to determine whether the HOL holds such recorded information as opposed to whether it is legally compliant with legislation or guidance over which he has no jurisdiction. He therefore asked the HOL about the searches it had undertaken in response to the request.
20. The HOL confirmed that it had provided the complainant with copies of the test certificates associated with its requirement to test and maintain its lightning protection system to conform to the Electricity at Work Regulations 1989. It stated that it did not claim to comply with BS EN 62305 which is why its certificates state non-compliance as a matter of course. It had also given the complainant copies of the specialist reports referred to in paragraph 9.

21. With regard to the search for the requested information, the HOL said:

"The staff responsible for this area of work advised that we did not undertake such assessments and provided us with the explanation [relayed to the complainant]. Given this certainty no searches were carried out beyond those which produced the disclose documents."

22. The HOL confirmed that there is no business purpose or statutory requirement on it to hold the requested report, stating that there is no

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others/Environment Agency (31 August 2007) EA/2006/0072*.

legal requirement for it to undertake risk assessments. It stated that it had provided all the relevant information it holds and had explained to the complainant why it does not, and never has, held lightning risk assessments.

Conclusion

23. The Commissioner's decision is, on the balance of probabilities, that apart from the information disclosed to the complainant within 20 working days in relation to parts 1 and 2 of his request, no information is held that is relevant to part 3 the request and therefore the HOL complied with regulations 5(1) and 5(2) of the EIR in this case.
24. Under the EIR, where information is not held, this means that the exception to the duty to disclose provided regulation 12(4)(a) applies. In this case this exception was not cited by the HOL as it did not deal with the request under the EIR. The Commissioner therefore also finds that the HOL breached regulation 14(3) of the EIR, which requires a response specifying any exceptions that are relied upon, as a result of applying the FOIA to information which is environmental.

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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.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

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