

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 September 2014

Public Authority: Norfolk County Council
Address: County Hall
Martineau Lane
Norwich
NR1 2DH

Decision (including any steps ordered)

1. The complainant has requested information relating to the Longwater Material Recycling Facility ("Longwater MRF") at Costessey, Norwich.
2. The Commissioner's decision is that, on the balance of probabilities, Norfolk County Council ("the Council") does not hold information falling within the scope of the complainant's request. The Commissioner is satisfied that the Council has complied with Regulation 5(1) of the EIR.
3. The Commissioner does not require the Council to take any further action in respect of this matter.

Request and response

4. On 31 March 2014, the complainant wrote to Norfolk County Council and requested information in the following terms:

"I would like to know;

- a) The cost and extent of works at Longwater
- b) What material, currently reprocessed there, will be covered by the new extended facility
- c) How glass will be collected, and whether new bins will be needed to avoid breakages and cross contamination

- d) How much will the County's recycling rate go up once the new facilities kick in
- e) When will the County and Districts start collecting C&I waste as others are doing

and finally for now

why has there been so much secrecy about the Longwater project? Isn't transparency supposed to be the name of the game?"

5. The Council responded to the complainant's request on 11 April 2014. The Council advised him that it did not hold the information he seeks and directed him to the seven district councils in Norfolk and to a company called Norse Environmental Waste Services. In respect of his final question, the Council advised the complainant that the EIR does not exist to answer questions that are statements of opinion and consequently that question would not be answered.
6. On 23 April the complainant again wrote to the Council. He complained about the Council's apparent prevarication in providing him with the information he seeks. He pointed out that Norfolk County Council and the six [sic] district councils worked together as partners in the Waste Management Partnership and asserted that the County is party to all that is happening. He also asserted his belief that a cost/benefit analysis would have been carried out prior to the investment of monies in a new recycling plant.
7. The Council wrote to the complainant again on 3 June 2014 following the conclusion of its internal review. The Council determined that it does not hold any information relevant to the complainant's request. In making this determination the Council relied on the provisions of Regulation 3(2) of the EIR and on the Commissioner's guidance.
8. The Council informed the complainant that Norse Environmental Waste Services holds information relating to his request and it holds this information on behalf of the Waste Collection Authorities (the seven district councils). It pointed out that contract for the Longwater Material Recycling Facility ("MRF") is being procured by the District Councils and that Norfolk County Council is not a party to that contract. The Council therefore advised the complainant to approach the District Councils for the information he seeks.

Scope of the case

9. The complainant contacted the Commissioner on 4 June 2014 to complain about the way his request for information had been handled.
10. Whilst he accepts that the Council is not responsible for the recycling of waste, the complainant believes that the County Council is the lead authority in the Norfolk Waste Partnership and that it may use the extended facility of the Longwater plant to recycle materials collected at its household waste recycling centres.
11. The Commissioner has investigated this complaint in order to determine whether the Council holds recorded information falling within the complainant's request and whether it has met its obligations to provide the complainant with the information he seeks.

Reasons for decision

Is the information 'Environmental Information'?

12. The Council's responses to the complainant have referred to the EIR.
13. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
14. Under regulation 2(1)(c) of the EIR, any information on activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land.
15. The Commissioner has considered the nature of the information sought by the complainant. He is satisfied that the information can be properly construed as being environmental information. The Commissioner therefore considers that the request should be dealt with under the EIR.
16. Under Regulation 5(1) of the EIR a public authority holding environmental information is obliged to make that information available on request.
17. The Commissioner has considered the complainant's request, the Council's response to that request and the Council's internal review. He has investigated this matter to determine whether the Council holds information falling within the scope of the complainant's request and

whether it has satisfied the duty provided by Regulation 5(1) of the EIR to provide the complainant with that information.

18. Here, the Council argues that it does not hold the information sought by the complainant. It maintains the position that the information is held by Norfolk Environmental Waste Services ("NEWS") and that this organisation is a separate public authority for the purpose of the EIR and FOIA.
19. Regulation 3(2) of the EIR is relevant to this case. This states that –
"For the purpose of these Regulations, environmental information is held by a public authority if the information –
 - (a) is in the authority's possession and has been produced or received by the authority; or
 - (b) is held by another person on behalf of the authority."
20. The Council has advised the Commissioner that certain officers or members of the Council may hold information relevant to the complainant's request, but would do so only in their capacity as Directors of NEWS.
21. The Commissioner understands that that Council is the Waste Disposal Authority and that the seven district councils are the Waste Collection Authorities.
22. Waste Collection Authorities have a duty under section 45 of the Environmental Protection Act 1990 ("the EPA") to arrange for the collection of household waste in its area and, under section 48 of that Act, to deliver all the collected waste to places where the Waste Disposal Authority directs. This duty is subject to an exception which allows Waste Collection Authorities to choose to arrange for some of the waste they collect to be recycled, rather than delivering it to the Waste Disposal Authority. Accordingly, the role of the Council in collecting waste materials does not extend to waste which the district councils intend to be recycled.
23. It is under the exception referred to above, that the seven district councils have worked together and have entered into a contract with NEWS to receive and recycle waste materials.
24. Notwithstanding the points made above, the Commissioner asked the Council a number of questions concerning any searches it has made for information falling within the scope of the complainant's request.

25. The Council advised the Commissioner that it had not searched for any information where the request was not for documented information. Nor did the Council search for information which related to a question of what might happen in the future or where the question asked was self-evidently not a matter for which the Waste Disposal Authority would hold or could hold documented information.
26. The Council informed the Commissioner that an officer of the Waste Disposal Authority had offered some logistical support during the early stages of the contract's procurement process. This resulted in some information being held in an electronic file which the Council examined to ascertain whether it contained information relevant to the complainant's request. The information contained in the file was found to relate to the early stages of the procurement and not to the final signed contract.
27. In addition to the above, the Council has assured the Commissioner that there is no evidence to suggest that any information relevant to the complainant's request has been deleted or destroyed and, had the Council been a party to the contract, it would have retained the tender documentation and contract for seven years following its completion.
28. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds any further recorded information, relevant to the complainant's request. The Commissioner makes this determination by applying the civil test of the balance of probabilities, in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
29. The information provided by the Council about its role as a Waste Disposal Authority, and the focus of the focus of the complainant's request being recycling, the Commissioner has concluded that the Council's position is entirely tenable. He is satisfied that, on the balance of probabilities, the Council does not hold any information which is relevant to the complainant's request. Consequently the Commissioner has determined that the Council has complied with regulation 5(1) of the EIR.
30. The Commissioner accepts that the information sought by the complainant is more likely to be held by NEWS and/or by any of the seven district councils.

Right of appeal

31. 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@hmcts.gsi.gov.uk

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

32. 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.
33. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire

Reference: FER0543487

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