

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 18 June 2019

**Public Authority:** Sefton Metropolitan Borough Council  
**Address:** Bootle Town Hall  
Oriol Road  
Bootle  
Liverpool  
L20 7AE

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to applications and approvals for work to be carried out on a watercourse. Sefton Metropolitan Borough Council disclosed some information but confirmed that it did not hold a specific receipt.
2. The Commissioner's decision is that Sefton Metropolitan Borough Council was correct to state that it does not hold the requested information. The Commissioner therefore considers that Sefton Metropolitan Borough Council has not breached regulation 12(4)(a) (Information not held at the time of the request) of the EIR.
3. The Commissioner does not require Sefton Metropolitan Borough Council to take any steps as a result of this decision.

#### **Request and response**

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4. On 27 January 2018 the complainant wrote to Sefton Metropolitan Borough Council (the council) and requested information in the following terms:

*'Please send me:-Full details of all the applications and approvals of the consent and permission certificates issued to allow work on a watercourse, as referred to [quoted] in the Sefton Metropolitan Borough Council, SURFACE WATER MANAGEMENT PLAN.*

*Timescale of retained and recorded details requested, from the date*

*{2012} transfer of authority to Sefton MBC, "Lead Local Flood risk" authority Sefton MBC. To 2018.'*

5. The council responded on 22 February 2018. It refused to disclose the information, citing section 40(2) (personal information) of the FOIA. It explained that since 2012 it had received 24 applications for consent to undertake work on a watercourse, of those 20 were approved, 1 refused and 3 were still undetermined.
6. Following an internal review the council wrote to the complainant on 23 March 2018. It explained that it should have considered his request under the EIR and disclosed a spreadsheet containing details of all land drainage consents issues by it, for the period 2012-2018. The council explained that it was withholding some personal data under the following exceptions:
  - Regulations 12(3) and 13 (personal data) of the EIR.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 10 October 2018 to complain about the way his request for information had been handled.
8. During the Commissioner's investigation, the complainant confirmed that he was not asking for any personal information. The Commissioner will therefore not consider the application of regulations 12(3) and 13 any further.
9. Additionally, during the Commissioner's investigation, the council helpfully disclosed further information to the complainant on several occasions. However, the complainant remained dissatisfied and contacted the Commissioner after each disclosure, wanting further information. Following the final disclosure, the Commissioner explained to the complainant that if he wanted further information, he would need to submit a new request.
10. The outstanding issue in the present case, is whether the council holds a copy of a specific receipt. During her investigation, the council confirmed to the Commissioner that it does not hold the receipt in question.
11. The Commissioner will therefore consider whether the council holds a copy of the receipt in question.

### **Reasons for decision**

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12. Regulation 12(4)(a) of the EIR provides that a public authority may refuse to disclose requested information if it does not hold it at the time the applicant's request is received.
13. In cases where a dispute arises over the extent of the recorded information 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 public authority to check whether the information is held and any reasons offered by it to explain why the information is not held.
14. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
15. The Commissioner asked the council what searches it had carried out. The council explained that its current financial management system (Agresso) was searched for any transactions from the land drainage applicant for the year the application was made and consent given (2015). This failed to return any matching transactions. The system was also searched for any transactions of £50 (the fee for land drainage consent) from that financial year but no matching transactions were found. The council also explained that it had changed its finance systems and had therefore searched its historic financial system archive (oracle) using the same criteria; it confirmed that there were no matching transactions.
16. The council also explained that the local drives where land drainage consents are recorded were also manually searched for a copy of the receipt but it was not found. It confirmed that receipts are generated and held in its financial system. Additionally, the council confirmed that it had searched emails between its flood and coastal erosion risk management team and land drainage applicant, but no details of any receipts were found.
17. The council confirmed that the relevant land drainage application and consent had been sent to the requester.
18. The Commissioner asked the council if its searches had included electronic data, to explain whether the searches included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails. The council explained that data is stored on corporate servers that members of the team can access.
19. Additionally, the Commissioner asked the council if its searches included electronic data, what search terms had been used. The council confirmed that it had used the following search terms: applicant's name,

applicant's business name, £50, applicant's email address and date ranges which included all of 2015. The council also confirmed that if held, the receipt would have been held electronically.

20. The Commissioner asked the council whether any recorded information had ever been held but was no longer held, or had been deleted or destroyed. The council explained that copies of redacted documents had been sent to the complainant which showed that consent was provided by it to the contractor to proceed with the work.
21. The Commissioner also asked the council what its formal records management policy says about the retention and deletion of records of this type. The council confirmed that it uses the Local Government Association's retention tool provided via LG Inform Plus to assist in determining the retention period for various types of records. All records relating to the receipt of payments made to the council have a recommended retention date of 6 years from the year the record was created. This is in accordance with the HMRC - Compliance Handbook Manual CH15400.
22. Additionally, the Commissioner asked whether there was a business purpose for which the requested information should be held. The council explained that records of land drainage applications and consents are held indefinitely to support it to undertake its powers under the Land Drainage Act 1991 and Flood and Water Management Act 2010 in respect of ensuring riparian owners are undertaking their duty to manage any watercourses on or bordering their property. These documents record details of changes (permanent or temporary) made to a watercourse.
23. The Commissioner also asked whether there were any statutory requirements upon it to retain the information. The council explained that it has a role as the Lead Local Flood Authority to administer duties and powers as set out in the Land Drainage Act 1991 and Flood and Water Management Act 2010. This includes consenting works to ordinary watercourses and powers to ensure riparian owners are undertaking their duty to maintain any watercourses on or bordering their property.
24. Additionally, the Commissioner asked the council if it held information that was similar to that requested, whether it had given appropriate advice and assistance to the applicant in line with the duty contained at regulation 9 of EIR. The council explained that it had not provided advice and assistance as it had provided the complainant with the relevant information held in relation to his request.

25. Taking everything into account, the Commissioner does not consider that there is any evidence to show that the council holds the receipt.
26. The Commissioner is therefore satisfied that, on the balance of probabilities, the council does not hold the receipt. Accordingly, she does not consider that there is a breach of section 12(4)(a) of the EIR.
27. Regulation 12(4)(a) is subject to the public interest test. However, the Commissioner considers that it is not necessary to consider the public interest as to do so would be illogical. The public interest cannot favour disclosure of information that the Commissioner is satisfied, is not held.

## **Right of appeal**

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28. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.

30. 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 .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
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SK9 5AF**