

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

**Date:** 15 August 2013

**Public Authority:** House of Commons  
**Address:** London  
SW1A 0AA

**Decision (including any steps ordered)**

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1. The complainant requested information about subsidence at the Palace of Westminster under the EIR. The House of Commons ('HOC') denied holding any information relevant to the request. It subsequently failed to properly carry out the internal review requested by the complainant.
2. The Information Commissioner's decision is that, on the balance of probabilities, HOC does not hold the requested information. However, he also finds that HOC breached regulation 11 of the EIR in failing to carry out an internal review within the requisite 40 working days. He does not require any steps to be taken in this case, but HOC should ensure there is no repetition of this breach.

**Request and response**

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3. On 14 February 2013 the complainant wrote to HOC and requested information in the following terms:

*"I would like to make the following request for material under the EIR regulations.*

*Please note that I am only interested in documentation generated between 14 February 2012 and the present day.*

*I am interested in receiving all possible information irrespective of which part of the Parliamentary Estate holds it.*

*1...Copies of all internal documentation (including emails) held by appropriate departments/sections of Palace of Westminster which in any relates (sic) to the problem of subsidence at the Palace and or measures aimed at tackling the situation. This will include but will not be limited to the well reported issue of the 'leaning tower'.*

*2...Copies of all communications and correspondence (including emails) between the relevant sections of the Palace of Westminster and any surveyor and or surveying firm which in any way relates to the problems of subsidence at the Palace and possible means of dealing with it. This will include but will not be limited to material relating to the 'leaning tower'.*

*3...Copies of all communications and correspondence (including emails) between the relevant sections of the Palace of Westminster and any building and or construction and or architect which in any way relates to the problems of subsidence at the Palace and possible means of dealing with it. This will include but will not be limited to material relating to the 'leaning tower'.*

*4...Copies of all communications and correspondence (including emails) between the relevant sections of the Palace of Westminster and English Heritage and or any other heritage body which in any way relates to the problems of subsidence at the Palace and possible means of dealing with it. This will include but will not be limited to material relating to the 'leaning tower'.*

*5...Copies of all communications and correspondence (including emails) between the relevant sections of the Palace of Westminster and Westminster City Council which in any way relates to the problems of subsidence at the Palace and possible means of dealing with it. This will include but will not be limited to material relating to the 'leaning tower'.*

*6...All documents held by the Palace (including emails) which in any way relates to proposals and or plans to sell off all or part of the Parliamentary estate. This will include but will not be limited to material relating to the 'leaning tower'."*

4. On 14 February 2013 HOC responded. It denied holding the requested information but confirmed there are no plans to sell any part of the estate. HOC also provided Mr Hastings with a link to a previous FOIA disclosure which contained details about the clock tower settlement and tilt.
5. The complainant requested an internal review on 26 March 2013. HOC wrote to the complainant on 3 April 2013 to say that it was unable to carry out an internal review because the information is not held and because he had not detailed the issues he had for the review.

6. The complainant responded and informed HOC that failure to process the internal review would result in an automatic complaint to the Information Commissioner (the 'Commissioner'). On 5 April HOC acknowledged his comment and advised it had asked the relevant areas to review their records again to ensure that its response had been accurate. It reiterated that it was unclear about what the complainant wanted reviewing.
7. On 16 April 2013 HOC advised the complainant, after a further search, that no information was held. It again repeated that it was unclear as to what he was specifically asking HOC to review as he had not set this out. That same day, the complainant contacted HOC to remind it that the internal review should be conducted by an appropriate person not previously involved with the original decision.
8. HOC wrote to the complainant on 18 April 2013, setting out the chronology of the correspondence about the review, and confirmed it had not carried out an internal review as *"it is unclear what you would like reviewed and no further explanation has been forthcoming"*.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 23 April 2013 to complain about the way his request for information had been handled. He asked the Commissioner to investigate whether HOC held any information falling within the scope of his requests, particularly given the recent and significant press coverage of the matter, and complained about HOC's *"apparent failure to carry out an internal review into its assertion"* that no information was held.
10. The Commissioner has investigated whether, on the balance of probabilities, HOC held any information relevant to the request. He has also considered HOC's handling of the complainant's request for an internal review.

### **Reasons for decision**

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#### **Regulation 2 - Is the information environmental?**

11. Information is environmental if it meets the definition set out in regulation 2 of the EIR. Regulation 2(1)(a) covers the state of the elements of the environment, including water, soil and land. The request in this case relates to information about subsidence. This can be triggered by man-made disturbances, a change in drainage patterns, heavy rain or water abstraction with the potential to cause damage to

foundations, buildings and infrastructure. Regulation 2(1)(f) includes "built structures inasmuch as they are or may be affected by the state of the elements", in this case, referred to in 2(1)(a). The Commissioner therefore accepts that it was correct to handle the request under the EIR.

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

12. 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. For clarity, 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"<sup>1</sup>.
13. The Commissioner therefore asked HOC for an explanation of the extent of its search for information in response to the request. HOC said that in accordance with its standard procedures, the request was initially sent to its Department of Facilities, and subsequently to the Parliamentary Estates Department ('PED') as this would be the location where any relevant information would be held.
14. HOC has guidance which it sends in all cases to departments to assist them in their search for information, as follows:

*"You should check the relevant records and indexes and consult other staff as appropriate. You will have to find the information requested before you can decide whether to release it. You may have to look in a variety of places, and at paper records as well as electronic records. You should record what steps you have taken to locate the information. Once you have collected all the relevant material you must assess it for release. If you have not already done so you should check whether the information is already publicly available."*
15. HOC confirmed its PED staff carried out a search in accordance with this guidance and also consulted with Thames Water who held information

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

on proposed works near the clock tower, but nothing within the scope of the request. PED therefore confirmed no information was held. This was checked with the Director General of Facilities, whose responsibilities include overall oversight of PED, and he confirmed no information was held.

16. HOC explained that on receipt of the complainant's request for an internal review, a second check was carried out to ensure that no information had been missed. The Director General of Facilities office confirmed all staff who were considered likely to have been involved in any discussion of subsidence on the Estate had been asked. This included the Principal Estate Manager, Conservation Architect and a Senior Project Leader, as well as the Head of the Director's Office. They were asked to search through emails, files and hard copy information for the time period requested. Nothing of relevance was found.
17. In this case the Commissioner is satisfied that HOC has carried out adequate searches of all locations and records where the information might be held. There is no evidence of any inadequate search or grounds for believing there is a motive to withhold information. The Commissioner is therefore satisfied in this case that, on the balance of probabilities, HOC does not hold any recorded information relating to the request.

### **Regulation 11 – Representations and reconsideration**

18. Regulation 11(1) of the EIR states "*...an applicant may make representations to a public authority in relation to an applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request*".
19. As set out in the "Request and response" section of this notice, the complainant requested an internal review on 26 March 2013, although he did not specify what his concerns were. Following an exchange of correspondence HOC carried out a further search and confirmed no information was held, but maintained that it would not carry out the review as the complainant had not detailed what his issues were.
20. The Commissioner asked HOC to explain in more detail why it had refused to carry out an internal review. In reply, HOC said that its view is that the complainant had not made "*representations*" as set out under regulation 11(1) of the EIR. It made reference to the Commissioner's own guidance, which encourages public authorities to respond to "*any written reply expressing dissatisfaction*" by carrying out an internal review. This guidance also recommends that different staff should conduct the review than dealt with the original request. HOC stated that the guidance is not binding and goes beyond the actual requirements set

out in the EIR, and that it would be an *"unnecessary and disproportionate use of public funds"* to require it to do more than it has.

21. In reaching his decision about HOC's handling of the complainant's request for an internal review, the Commissioner has referred to the EIR Code of Practice, which at paragraph 60 states:

*"Any written reply from the applicant (including one transmitted electronically) expressing dissatisfaction with an authority's response to a valid request for information should be treated as a complaint, as should any written communication from a person who perceives the authority is not complying with its publication scheme where it has one. These communications should be handled in accordance with the authority's review procedure pursuant to Regulation 11, even if the applicant does not state his or her desire for the authority to review their decision or the handling of their application."*
22. The Commissioner's view is that the complainant's email requesting HOC to conduct an internal review into the handling of his request constitutes an expression of dissatisfaction. Whilst acknowledging that his guidance is indeed not binding, it is the Commissioner's view that HOC should have carried out an internal review in this case. In any case where there is a dispute over whether information is held, it would seem obvious to the Commissioner that an 'expression of dissatisfaction' by the requester would relate to their belief that recorded information within the scope of their request is held.
23. The Commissioner would have expected HOC to conduct a further search upon receipt of the request for review. In the event, HOC carried out a further search but maintained its stance that an internal review had not been carried out.
24. The complainant expressed concern that the review had not been conducted by an independent person. Given HOC's categorical statement that it has not carried out an internal review, this is a moot point. The Commissioner notes that neither the Regulations nor the associated Code of Practice for the EIR specify that an independent person should be asked to conduct reviews under the EIR; however, he notes from HOC's website that internal reviews are normally carried out by *"a panel of reviewers who are usually senior members of staff"*.
25. Irrespective of the circumstances in this case, by failing to carry out an internal review within 40 working days, HOC breached regulation 11(2) of the EIR.

## Right of appeal

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26. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

27. 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.
28. 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**  
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**Information Commissioner's Office**  
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