

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

Decision notice

Date: 27 June 2019

Public Authority: Huntingdonshire District Council
Address: Pathfinder House
St. Marys Street
Huntingdon
Cambridgeshire
PE29 3TN

Decision (including any steps ordered)

1. The complainant has requested information about a person who, he alleges, has caused criminal damage to his property.
2. The Commissioner's decision is that Huntingdonshire District Council ("the Council") failed to issue its refusal notice within 20 working days and has therefore breached Regulation 14(2) of the Environmental Information Regulations ("the EIR").
3. The Commissioner does not require any further steps.

Request and response

4. The complainant wrote to the Council on numerous occasions to request information about a person who, he claimed, had caused criminal damage to and fly tipped upon, his property, so that he could pursue prosecution options. Whilst the precise wording varied each time, each request referenced "the identity of the person" who, the complainant claimed, had caused the damage.
5. The first such request was submitted on 6 November 2018 and was phrased thus:

"I intend to take a private prosecution against the person responsible for the criminal damage and also seek restitution for his

acts, so would be grateful if you could provide me with details of the miscreant."

6. The Council did not acknowledge any of the requests.
7. Following the intervention of the Commissioner, the Council issued a refusal notice on 16 May 2019. It cited Regulation 13 (personal information) as its reason for refusing the requests.

Scope of the case

8. The complainant first contacted the Commissioner on 26 March 2019 to complain about the failure of the Council to respond to his request.
9. In line with her usual practice, the Commissioner contacted the Council on 24 April 2019 to highlight the outstanding response. She requested that the Council respond to the request within 10 working days.
10. The complainant contacted the Commissioner subsequent to the refusal notice being issued. The Commissioner explained that, when responding to an EIR request for the personal data of a third party, the Council could only consider whether there was a legitimate public interest in disclosing that information to the world at large and not any legitimate interests which related solely to the person requesting the information. The complainant did not appear to dispute the Council's use of the exception, but complained about the time the Council had taken to respond to the request and about the Council's general attitude towards him. The Commissioner therefore agreed to issue a decision notice addressing the timeliness aspect of the response only.
11. The Commissioner considers that the scope of her investigation is to determine whether the Council has complied with Regulation 14(2) of the EIR.
12. For the avoidance of doubt, the Commissioner takes no position, in this notice, as to whether the Council was entitled to rely on Regulation 13 to refuse the request.

Reasons for decision

13. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites*

including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, 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, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
 - (d) reports on the implementation of environmental legislation;*
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, 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 Commissioner has not seen the requested information but, as it is information relating to fly tipping, she believes that it is likely to be information about "factors" affecting the elements of the environment or about "measures" likely to affect those factors. For procedural reasons, she has therefore assessed this case under the EIR.
15. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
16. Regulation 14 states that:
- (1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*
 - (2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*

17. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
18. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue its refusal notice within 20 working days, the Council has breached Regulation 14(2) of the EIR.

Other Matters

19. The Commissioner notes that, in its response to the complainant, the Council indicated that it might be able to provide the requested information outside of the EIR. The Commissioner has also been made aware of correspondence in which the Council has indicated that, whilst it cannot identify a legitimate public interest in disclosing the information to the world at large (which is what it must do under the EIR), the requestor may have his own individual legitimate interest in the information.
20. The Commissioner cannot require a public authority to disclose information outside of the EIR (or FOIA) via a decision notice. Nor can she make a determination as to whether such a disclosure could be lawful under Data Protection. She will restrict herself to expressing a hope that the Council and the complainant can engage positively to resolve this matter.

Right of appeal

21. 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

22. 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.
23. 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

Ben Tomes
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Water Lane
Wilmslow
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SK9 5AF