

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 November 2014

Public Authority: Guildford Borough Council
Address: Millmead House
Millmead
Guildford
Surrey
GU2 4BB

Decision (including any steps ordered)

1. The complainant has requested information relating to a housing projections model. Guildford Borough Council disclosed some information and stated that other information was not held.
2. The Commissioner's decision is that Guildford Borough Council:
 - correctly confirmed that the requested information is not held and that it complied with regulation 5 of the EIR and;
 - failed to issue a refusal notice within 20 working days and breached regulation 14 of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 9 July 2014, the complainant wrote to Guildford Borough Council (the "council") and requested information in the following terms:

Please supply a copy of the GL HEARN housing projections model. This model has been prepared as part of the evidence base for the new Local Plan and forms part of GLH's SHMA document. The model is a maintained, I expect in spreadsheet format. Please supply an electronic copy of the model in a conventional spreadsheet format .i.e., Excel or similar. Please ensure that all assumptions are explicitly stated. Please ensure that any linked data is also supplied or supplied in hard copy form.

5. The council responded on 12 September 2014. It stated that some of the information was not held by the council but was held by "...consultants who prepared the model and projections for us." The council disclosed some information it held which fell within the scope of the request.
6. Following an internal review the council wrote to the complainant on 2 October 2014. It stated that the information was produced for the council by a third party and that it is the "intellectual property" of said party. The council stated that the information was commercially sensitive and refused to provide it.

Scope of the case

7. On 9 October 2014 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would seek clarification of the grounds upon which the council was not disclosing any additional information and consider whether the council had provided all the relevant held information falling within the scope of the request.

Reasons for decision

Regulation 5 – duty to provide environmental information

9. Under regulation 5 of the EIR, public authorities have a duty to provide environmental information identified in a request.
10. In this case, during the Commissioner's investigation, the council confirmed that the information it had previously referred to (in its internal review) as being the intellectual property of a third party and being "commercially sensitive", is not actually held. The council acknowledged that the position it took at the time of the internal review was, therefore, incorrect.
11. The council explained that the request relates to a housing projection which was produced for it by consultants using their own formulae. It confirmed that the projections, which were derived from the formulae, had been disclosed to the complainant and that the information in dispute is these formulae.
12. The council stated that the formulae, which the complainant believes should be held by the council have never been in its possession. It explained that the projections which it provided to the complainant in spreadsheet form, were the outcome of a project jointly commissioned by the council, together with Waverly and Woking Borough Councils. The council stated that none of the officers from the council or from the other participating councils have seen the formulae used by the consultant to generate the projections.
13. The council has stated that the formulae, upon which the projections are based, were in existence before the council and other participating councils commissioned the work and they are not covered by the contract for the project. It explained that the consultants would be likely to use the same formulae for other work commissioned by other clients. The council has explicitly stated to the Commissioner that there is no business need for the council to hold the formulae in question and that the information is not held by the consultant on the council's behalf.
14. The complainant has maintained that the information should be held by the council, however, having considered the council's explanations and the available evidence the Commissioner has concluded that the council has correctly confirmed that it does not hold the formulae. The Commissioner has, therefore, determined that the council disclosed all the relevant information it holds which falls within the scope of the request and that it complied with regulation 5 of the EIR.

Regulation 14 – refusal notice

15. Where requested information is not held, an authority should, under regulation 12(4)(a), issue a refusal notice under regulation 14 which states this fact within 20 working days.
16. In this case the complainant submitted their request on 9 July 2014 but the council failed to issue a refusal notice stating that the information was not held within the statutory time limit.
17. Although the council has now confirmed to the Commissioner that the formulae information is not held, in failing to issue the complainant with a refusal notice stating this fact within the specified 20 working days the Commissioner finds that the council breached regulation 14(2) of the EIR.

Right of appeal

18. 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

19. 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.
20. 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
SK9 5AF