

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

Date: 18 October 2024

Public Authority: Kent County Council
Address: Sessions House
County Hall
Maidstone
Kent ME14 1XQ

Decision (including any steps ordered)

1. The complainant requested information regarding highways rights in relation to a specific parking area. Kent County Council (the "Council") disclosed some information and withheld other information under the exemption for legal professional privilege (section 42 of the FOIA).
2. The Commissioner's decision is that the request should have been handled under the Environmental Information Regulations 2004 (EIR) rather than the Freedom of Information Act 2000 (FOIA). The Commissioner also finds that the Council has breached regulation 11 by failing to issue an internal review within 40 working days.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request under the EIR.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 January 2024, the complainant wrote to Kent County Council (the "Council") and requested the following information:

"....all evidence provided that was adjudged to have demonstrated that the Highways Rights over the parking area in front of the Wheelwright Arms in Matfield should be removed (I attach both the previous and updated maps for clarity), together with the advice received by KCC.

Furthermore please provide full information on the process and investigations that were undertaken in order for this matter to be resolved, to include meetings held, attendees, internal processes, consultations and policies followed."

6. The Council responded on 15 March 2024. It disclosed some information and withheld other information under the exemption for legal professional privilege (section 42 of the FOIA).
7. On 8 April 2024 the complainant asked the Council to carry out an internal review.
8. The Council acknowledged the complainant's review request but failed to carry out a substantive review.

Scope of the case

9. On 12 June 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled. The complainant identified the Council's failure to carry out an internal review and its decision to withhold information under the exemption in section 42 of the FOIA as their specific concerns.
10. The Commissioner contacted the Council and directed it to carry out an internal review. The Council failed to do this.
11. In view of the nature of the request, which relates to decisions in relation to highways access, it occurred to the Commissioner that the information was likely to be environmental in nature and the request, therefore, fell to be handled under the EIR rather than the FOIA. The Commissioner wrote to the Council in this regard and directed it to issue a new response to the complainant under the EIR and, where information was being withheld, to provide him with details of its final position.

12. The Council failed to respond to the Commissioner in the timeframe set in his correspondence so he has set out his conclusions on the available evidence.

Reasons for decision

Is the requested information environmental?

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. Although he has not seen the requested information, as it is information relating to decisions about highways access and more broadly about the use of land, the Commissioner believes that it is likely to be information on measures as defined in regulation 2(1)(c). It follows that the request falls to be considered under the EIR.

15. The Commissioner requires the Council to provide the complainant with a fresh response to the request under the EIR.

Regulation 11 – reconsideration (internal review)

16. In the relation to the duty to carry out internal reviews the relevant sections of regulation 11 of the EIR state:

“(3) The public authority shall on receipt of the representations and free of charge—

(a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.”

17. In this case the complainant requested an internal review on 8 April 2024 and despite chasers being sent by the complainant and subsequently the Commissioner, the Council failed to carry out an internal review.
18. The Commissioner therefore finds that the Council has breached regulation 11 of the EIR by failing to carry out an internal review within the statutory time limit of 40 working days.

Other matters

19. Although they do not form part of this investigation the Commissioner would like to note the following matters of concern.

Engagement with the Commissioner's investigation

20. In investigating complaints the Commissioner is reliant on cooperation from public authorities and he expects to be provided with timely and accurate responses to his enquiries.
21. In this case the Council ignored the Commissioner's initial direction to carry out an internal review and subsequently failed to provide a response to his investigation enquiries.
22. In view of this the Commissioner has concerns that the Council either does not understand its responsibilities under the FOIA and EIR and/or is unwilling to engage in his investigations.
23. In future the Commissioner expects that the Council will provide timely responses to his enquiries and, where directed to take remedial action to bring it into compliance with the legislation, it will do this.
24. The Commissioner will monitor the Council's future practice and if he identifies a repetition of these practices or other concerns, he may consider further action.

Right of appeal

25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF