

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 October 2014

Public Authority: Brentwood Borough Council

Address: Council Offices
Ingrave Road
Brentwood
Essex
CM15 8AY

Decision (including any steps ordered)

1. The complainant has requested information relating to a railway station. Brentwood Borough Council responded to the request but did not reply to the complainant's internal review request until being prompted to do so during the Commissioner's investigation.
2. The Commissioner's decision is that Brentwood Borough Council has breached regulation 11 of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 28 April 2014 the complainant wrote to Brentwood Borough Council (the "council") and requested the following information:

"I would like to know details of any meetings, phone calls or emails between Network Rail, Greater Anglia, Obellio Greater Anglia and Brentwood Borough Council, in particular the planning department relating to (in decreasing order of importance should the workload required to produce the information be deemed excessive):

1) Modifying the railway station exit so that it emerges onto the existing access road to the car park behind the station (this access road joins Mount Avenue)

2) Widening said access road

3) Re-locating the taxi rank from the existing location on Shenfield High Street to behind the station

4) Any other works or development on the land between the access road and Herington Grove properties.

5) The recently constructed multi-storey car park"

5. The council responded on 13 May 2014. It provided some information and confirmed that correspondence specified in the request was held. However, it did not disclose any correspondence to the complainant.
6. The complainant wrote to the council on 14 May 2014 and expressed dissatisfaction with its handling of the request. The Commissioner considers that this amounted to a request that the council review its handling of the request in accordance with regulation 11 of the EIR. On 29 May 2014 the complainant sent a further letter of complaint to the council regarding its handling of the request.

Scope of the case

7. On 25 July 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 consider whether the council had complied with its duty to conduct internal reviews under regulation 11 of the EIR.
9. During the course of the Commissioner's investigation (on 16 October 2014) the council responded to the complainant.

Reasons for decision

Is it Environmental Information?

10. Regulation 2(1) of the EIR defines what 'environmental information' consists of. The relevant part of the definition are found in 2(1)(a) to (c) which state that it is as any information in any material form 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) and (b) as well as measures or activities designed to protect those elements...'*
11. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question.
12. The Commissioner notes that the requested information relates to planning matter. He has considered whether this information can be classed as environmental information, as defined in Regulation 2(1)(a)–(f), and he has concluded that it can for the reasons given below.
13. In this case the subject matter of the withheld information relates to land/landscape and advice which could determine or affect, directly or indirectly, policies or administrative decisions taken by the council.
14. The Commissioner considers that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information can be considered to be a measure affecting or likely to affect the environment or a measure designed to protect the environment. This is in accordance with the decision of the Information Tribunal in the case of *Kirkaldie v IC and Thanet District Council* (EA/2006/001) ("Kirkaldie").

Regulation 11 – internal review

15. Regulation 11(1) of the EIR states:

"...an applicant may make representations to a public authority in relation to the 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."

16. Regulation 11(3) states:

"The public authority shall on receipt of the representations and free of charge-

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

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

17. Regulation 11(4) states:

"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."

18. In this case the complainant made their representations under regulation 11(1) to the council on 14 May 2014. On 16 October 2014 the council issued a response to the complainant's request for internal review. In responding late, the Commissioner finds that the council has breached regulation 11 of the EIR.

Other matters

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

20. Paragraph 1 of the code of practice issued under regulation 16 of the EIR (the "code") states:

All communications to a public authority, including those not in writing and those transmitted by electronic means, potentially amount to a request for information within the meaning of the EIR, and if they do they must be dealt with in accordance with the provisions of the EIR. It is therefore essential that everyone working in a public authority who deals with correspondence, or who otherwise may be required to provide information, is familiar with the requirements of the EIR and this Code in

addition to the FOIA and the other Codes of Practice issued under its provisions, and takes account of any relevant guidance on good practice issued by the Commissioner. Authorities should also ensure that proper training is provided."

21. Having considered the council's handling of the complainant's request the Commissioner has concerns that the council might not have provided its staff with sufficient training or that it may not take its obligations under the EIR sufficiently seriously. In future the Commissioner expects that the council will respond to requests in accordance with the EIR and the code.

22. Paragraph 61 of the code states:

"The complaints procedure should be a fair and impartial means of dealing with handling problems and reviewing decisions taken pursuant to the EIR, including decisions taken about where the public interest lies. It should be possible to reverse or otherwise amend decisions previously taken. Complaints procedures should be clear and not unnecessarily bureaucratic. They should be capable of producing a prompt determination of the complaint."

23. In this case, the council failed to respond until some 5 months since receiving the complainant's representations. The Commissioner expects that, in future, the council will deal with complaints about its handling of requests promptly and in accordance with the EIR and the code.

Right of appeal

24. 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

25. 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.
26. 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