

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 29 October 2014

Public Authority: Wirral Metropolitan Borough Council
Address: Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant made a request for information to Wirral Metropolitan Borough Council ("the Council") for a copy of a viability study concerning the provision of affordable housing at Ingleborough Road, Birkenhead which was subject to a planning application by Tranmere Rovers Football Club. The Council issued an initial response when it said that the complexity and volume of the information requested meant that it was impracticable to comply with the request or make a decision to refuse to do so. Therefore, in accordance with regulation 7(1) the Council extended the deadline to respond to the request to 40 working days.
2. The Council refused to comply with the request or issue a refusal notice within 40 working days. Despite being reminded to do so by the Commissioner the Council has still failed to respond to the request at the time of writing. Therefore the Commissioner's decision is that the Council has breached regulation 7(1) of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Council shall comply with regulation 5(1) of the EIR by disclosing the requested information to the complainant or else issue a valid refusal notice in accordance with regulation 14.
4. The public authority must take these steps within 35 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

(or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 16 July 2014 the complainant made a freedom of information request to the Council for copies of a viability study and an independent assessment of that study concerning the provision of affordable housing at Ingleborough Road, Birkenhead which was subject to a planning application by Tranmere Rovers Football Club. The study was referred to in a report to the Council's planning Committee.
6. The Council responded to the request initially on 13 August when it explained that the request was being considered under the EIR. It went on to say that it was extending the deadline for responding to the request to 40 working days in accordance with regulation 7(1) of the EIR because it considered that it was impracticable to comply with the request or make a decision to refuse to do so within the usual 20 working days period.
7. The Complainant received nothing further from the Council.

Scope of the case

8. On 24 September 2014 the complainant contacted the Commissioner to complain about the Council's failure to respond to his request.
9. On receipt of the complaint the Commissioner contacted the Council to remind it of its obligations under the EIR and to ask it to confirm to him whether it had sent a substantive response to the complainant. If it had yet to respond the Commissioner asked that it do so within the next 10 working days.
10. The Council failed to respond to either the Commissioner or the complainant.

Reasons for decision

9. Regulation 5(1) and 5(2) of the EIR provide that:

***5.1-(1)** Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.*

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

10. Regulation 7(1) of the EIR allows a public authority to extend the deadline under regulation 5(2) to 40 working days where it reasonably believes that it would be impracticable to comply with the request or make a decision to refuse to do so within 20 working days.

***7.-(1)** Where a request is made under regulation 5, the public authority may extend the period of 20 working days referred to in the provisions in paragraph (2) to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.*

11. In this case the Council failed to issue a substantive response to the complainant within the 20 working day deadline or the later 40 working day deadline. The Commissioner considers this a breach of regulation 7(1) of the EIR.

Right of appeal

12. 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

13. 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.
14. 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

Pamela Clements
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