

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 February 2016

Public Authority: Isle of Wight Council
Address: County Hall
High St
Newport
Isle of Wight
PO30 1UD

Decision (including any steps ordered)

1. The complainant has requested a copy of an asbestos report relating to a specific road. Isle of Wight Council provided the requested report but the complainant disputed that all the relevant information had been disclosed.
2. The Commissioner's decision is that Isle of Wight Council has disclosed all the requested information and complied with regulation 5(1) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 15 September 2015, the complainant wrote to Isle of Wight Council (the "council") and requested information in the following terms:

"Can I please request a copy of the asbestos report which has been carried out on the Undercliff Drive."
5. The council responded on 28 September 2015. It stated that it was withholding the information under the exception for adverse affect to the course of justice (regulation 12(5)(b) of the EIR).

6. Following an internal review the council wrote to the complainant on 15 December 2015. It stated that it had overturned its original decision and disclosed the requested information to the complainant.

Scope of the case

7. On 20 December 2015, following the completion of the internal review, the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The complainant considers that the information disclosed by the council does not constitute the full report that was requested.
9. The Commissioner confirmed with the complainant that his investigation would consider whether the council had disclosed all the requested information.

Reasons for decision

Regulation 5 – duty to provide environmental information

10. Under regulation 5(1) of the EIR a public authority that holds environmental information shall make it available on request.
11. The council has explained that, in February 2014, a landslide led to closure of Undercliff Drive. It stated that, in October 2014, an unauthorised temporary road was erected by local residents using a contractor who brought material to the site to raise the level of the highway to allow residents to use the road.
12. The council confirmed that the requested report was commissioned by Island Roads (a Highway PFI working in partnership with the council) and written by ESG Environmental Chemistry. It explained that the report found that the temporary road surface in question contained asbestos.
13. The council disclosed the information to the complainant following its internal review, however, the complainant considers that the disclosed report is incomplete and does not reflect the information which is held by the council. The complainant has raised concerns that a specific page and a “main risk analysis” are missing from the report.
14. In relation to the “missing page”, the Commissioner notes that the PDF version of the report which was disclosed has, between pages 17 and

19, an unmarked page consisting of a "certificate for identification of asbestos fibres".

15. The Commissioner approached the council for clarification in this regard and the council confirmed that the report disclosed to the complainant is the same report which it had received from Island Roads, the owner of the report. The accuracy or completeness of information held by a public authority is not ordinarily a relevant factor when determining whether a request has been complied with – it is only necessary to establish whether recorded information held reflects what has been disclosed in response to a request. However, in this instance, following receipt of the complaint to the Commissioner, the council contacted ESG, the report's author, and asked them to check the accuracy of and completeness of the report.
16. The council has stated that ESG confirmed that the certificate for identification of asbestos fibres contained within the report is a duplicate of their testing certificate and all pages of the version of the report held by the council are "present and correct". ESG also stated that the certificate is not numbered (as page 18) because it was inserted into the report as a PDF document which could not be edited.
17. In relation to the complainant's concerns that the disclosed report did not include a "main risk analysis", the Commissioner asked the council whether such a document, either as part of the report itself or as a separate piece of information, was held. The council confirmed that it holds no such information in relation to the asbestos issues at Underhill Drive.
18. Whilst the Commissioner understands why the complainant might have arrived at the conclusion that the disclosed report is incomplete, he considers that the council has provided a convincing alternative explanation. In the absence of direct evidence which contradicts the council's explanation and, having considered the available facts, the Commissioner has concluded that, on the balance of probabilities, it is likely that the council has disclosed all the information which falls within the scope of the request.
19. The Commissioner finds that the council disclosed all the relevant requested information and complied with regulation 5(1) of the EIR.

Right of appeal

20. 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

21. 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.
22. 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