

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 December 2018

Public Authority: Elton Parish Council

Address: Council Offices
4 Civic Way
Ellesmere Port
CH65 0BE

Decision (including any steps ordered)

1. The complainant has requested from Elton Parish Council ("the Council") information regarding a petition to expand the dog park into the area designated for the Jubilee Field community woodland project.
2. The Commissioner's decision is that the Council has failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations (the EIR).
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Issue a substantive response, under the EIR, to the request.
4. The public authority must take this step 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 August 2018, the complainant wrote to the Council and requested information in the following terms:

"I'm making a freedom of information request in regards to a petition to expand the dog park into the area designated for the Jubilee Field community woodland project.

At the Parish Council meeting of 9/7/18, when questions were raised by the public to the council regarding the dog park expansion; the petition was stated as the reason for the expansion by [named council members]. But council members refused to let members of the public view the petition or know; the number of signatures the petition had gathered, on what dates the signatures were taken and if all signatory's were over the age of 18. I am asking for this information to now be provided under the Freedom of Information Act 2000.

In 2012 after the Parish Council's purchase of the land now known as the Jubilee Field; Elton residents were surveyed regarding what the area was to be used for, the survey indicated a preference for the land to be turned into a nature reserve. I am asking for a tally of the responses to this survey under the Freedom of Information Act 2000".

6. The Council responded on 11 August 2018. It stated that

"On behalf of Elton Parish Council, I acknowledge receipt of your Freedom of Information request. The Parish Council will respond to your request within 20 working days from the date of receipt."

7. The Council has not provided any further response to the complainant.

Scope of the case

8. The complainant contacted the Commissioner on 13 October 2018 to complain about the way her request for information had been handled.
9. The Commissioner contacted the Council on 21 November 2018 and was informed that the Parish Clerk had recently resigned but that a response to the complainant had been sent. There has been no evidence, however, that a response was provided to the complainant.
10. The Commissioner considers the fact that the response remains outstanding, despite her intervention, means that a decision notice is appropriate in this case.

11. The Commissioner considers that the scope of her investigation is to determine whether the Council has complied with Regulation 5(2) of the EIR.

Reasons for decision

Is the information environmental?

12. 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) and (b) as well as measures or activities designed to protect those elements."*
13. The requested information concerns matters around a petition to expand the dog park into the area designated for the community woodland project. The Commissioner therefore considers it to be information about "*measures*" affecting the elements of the environment. For procedural reasons, she has therefore assessed the case under the EIR.

Regulation 5 – duty to make environmental information available on request

14. Regulation 5(2) of the EIR states that, where a public authority has a duty to make environmental information available on request, it shall make it available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"

15. The Commissioner considers that the request in question constituted a valid request for information under the EIR. Whilst the council have claimed to have sent a response, the requestor has been clear that they have not received one and, when invited to present evidence, the council have failed to substantiate their position to the Commissioner. Therefore, the Commissioner has little option but to conclude that, in failing to issue a response to the request within 20 working days, the Council has breached Regulation 5(2) of the EIR.

Right of appeal

16. 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

17. 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.
18. 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
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